

UNLOCKED POTENTIAL? SMALL BUSINESSES IN THE CANNABIS INDUSTRY

HEARING BEFORE THE COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

HEARING HELD
JUNE 19, 2019



Small Business Committee Document Number 116-028
Available via the GPO Website: www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE
WASHINGTON : 2019

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WEDNESDAY, JUNE 19, 2019

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,

Washington, DC.

The committee met, pursuant to call, at 11:30 a.m., in Room 2360, Rayburn House Office Building. Hon. Nydia Velázquez [chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Finkenauer, Golden, Kim, Crow, Davids, Evans, Schneider, Espaillat, Delgado, Houlahan, Craig, Chabot, Hagedorn, Stauber, Burchett, and Joyce.

Chairwoman VELÁZQUEZ. Good morning. The committee will come to order.

I thank everyone for joining us this morning, and I want to especially thank the witnesses who have traveled from across the country to be here with us today.

We are here to draw what I believe is needed attention to an industry that is rapidly evolving. As more and more states take steps to bring cannabis to commerce, we are seeing small businesses at the forefront of this expanding industry. As the only House committee dedicated solely to the needs of small firms, it is important for us to be shedding light on the challenges these small entities face, as well as the economic potential they offer. That is why I have called today's panel, and I look forward to hearing more from our witnesses and thank them for taking the time to be with us this morning.

In recent years, there has been a rapid shift in the legal treatment of cannabis, often led by voters at the local and state levels. Today, nearly every American lives in a state where cannabis is decriminalized to some extent, and legal business activity is permitted to certain degrees. This rapid growth of the legal cannabis industry has had a considerable impact on our nation's broader economy. In 2018, consumer spending in this industry passed \$10 billion for the first time, and consumer spending is expected to increase to \$23 billion by 2022.

Investment activity also increased dramatically last year up \$13.8 billion in 2018, compared to only \$3.6 billion in 2017. Clearly these figures illustrate a market that is ripe for entrepreneurship. Despite growing economic opportunities around legal cannabis, factors like federal law enforcement, conflicting rules among the states, and our current banking regulations are hindering the ability for entrepreneurs and small businesses to fully engage in this new industry.

So today, we will have a chance on this committee, to spark the dialogue over the role of the federal government, and particularly, the Small Business Administration, can plan in supporting entrepreneurs in this sector. By reducing financial barriers to entry in cannabis-related businesses, SBA can play a critical role in offering affordable access to capital and counseling services. That is why I am currently working on legislation that will work to open some of the agency's programs to businesses in areas where the industry is legal.

We know the cannabis industry is quickly evolving but is mired with inconsistent federal and state laws that are creating barriers for small businesses. We are here today to listen to the challenges and opportunities small firms face in this industry.

Before I yield to my friend, Ranking Member Chabot, I want to mention that I understand that there are differing views on the legalization of cannabis. Our committee has had a long history of approaching issues in a thoughtful and constructive way to best represent the interests and concerns of entrepreneurs and small businesses. As the Ranking Member and I always say, there are no Republican small businesses nor Democratic small businesses, only American small businesses. And our role on this committee is to fight for them. I encourage everyone to keep that in mind and remember that we can disagree without being disagreeable.

Again, I want to thank the witnesses for being here today, and I now yield to the Ranking Member, Mr. Chabot, for his opening statement.

Mr. CHABOT. Thank you, Madam Chairwoman.

I would like to thank the witnesses for being here today. And as you look around the room, I would just say that it is clear that there is considerable interest in this topic because the room is packed. And as most people know, we like to think that this is the most bipartisan Committee in Congress. Both Ms. Velázquez and I have had the opportunity to lead this Committee over the past several years, and regardless of who is in charge, we have worked together and moved bipartisan legislation together. And as she mentioned, when we disagree, we do it without being disagreeable, usually.

Unfortunately, today is one of those times where the philosophical divide between our respective perceptions of how we should move forward deviates. But as is our custom, I am confident that we will do so respectfully.

Marijuana is the most commonly used illicit drug in the United States. Its use is associated with a range of adverse health effects. Short-term effects include altered senses, reduced motor coordination, diminished memory, and impaired problem-solving abilities.

Recent research suggests that the early use of marijuana may adversely impact long-term thinking, memory, and learning. Marijuana use is also associated with addiction to other substances and dependency, respiratory problems, child developmental problems related to use during pregnancy, and mental health problems. These are not my opinions; these are facts backed up by decades of academic and medical research.

In June 2018, scientists at the University of Pennsylvania discovered that young people who use marijuana frequently were more

likely than nonusers to have lower scores on memory tests, have greater difficulty learning new information, and show less than higher level problem solving. Other studies have also found that teen brains are more vulnerable to the effects of marijuana than alcohol.

And while I understand that the majority, if not all the states and municipalities have decriminalized marijuana to some degree, have implemented an age limit of 21, another study, this one by the National Institute for Drug Abuse for Teens, found that nearly 33 percent of 10th graders reported having used marijuana at least once. It does not stop there. A 2018 University of Michigan study found the percentage of 8th graders, 10th graders, and 12th graders who reported using marijuana is at the highest rate in history.

The U.S. Constitution established a government based on Federalism because a state is typically in the best position to legislate the laws most appropriate for its citizens. However, the drug market is a multi-billion dollar, nationwide business and its repercussions do not stop at state borders. It is my belief that the use of marijuana can be harmful to both family and society. Additionally, prohibiting marijuana sends a clear message to young people that this drug is not only illegal but dangerous.

I have concerns that opening this door as quickly and as widely as various states and municipalities are pushing will have a negative effect on our young people and on society at large. While I understand there may be entrepreneurial opportunities in this area, it is my opinion that the dangers to our Nation and the communities within it outweigh those opportunities.

I yield back.

Chairwoman VELÁZQUEZ. The gentleman yields back.

I would like to take a minute to explain the timing rules. Each witness gets 5 minutes to testify and the members get 5 minutes for questioning. There is a lighting system to assist you. The green light comes on when you begin, and the yellow light means there is 1 minute remaining. The red light comes on when you are out of time, and we ask that you please stay within the timeframe to the best of your ability.

I would now like to introduce our witnesses.

Our first witness is Ms. Shanita Penny, a cannabis advocate, business professional, and entrepreneur. Her boutique consulting firm provides management and strategy consulting to startups and small businesses in the legitimate cannabis industry. She proudly serves as president of the Board of Directors for the Minority Cannabis Business Association, and is also a member of the New Jersey Cannabis Industry Association's Board of Trustees. Ms. Penny is a proud alumni of North Carolina A&T State University where she earned a bachelor's of science degree in transportation and logistics management.

Our second witness is Mr. Eric Goepel, the founder and CEO of the Veterans Cannabis Coalition, a nonprofit advocacy group dedicated to ending cannabis prohibition and guaranteeing equal access to cannabis for veterans and all Americans. He enlisted in the U.S. Army at the age of 18, served for 7 years, providing communications and intelligence support in the Special Operations community. During that time, he deployed twice to Iraq and once to the

Philippines. At the end of his enlistment, Mr. Goepel worked as a defense contractor in Afghanistan before returning to the U.S. to attend and graduate from the University of California-Berkeley, with a B.A. in Political Science. Prior to founding the Veterans Cannabis Coalition, Eric was the Assistant Director of the American Legion's National Security Division where he developed positions for the legion on the opioid crisis, cybersecurity, and transnational organized crime. Welcome to all of you.

Our third witness today is Ms. Dana Chaves, the Senior Vice President and Director of Specialty Banking for First Federal Bank of Florida. She has been building strategic banking financing and legislative relationships to further the cannabis industry access to banking and financial services for more than 5 years. Ms. Chaves also currently serves as Chair of the National Cannabis Industry Association's Banking Access Committee. Prior to joining First Federal in February of this year, Ms. Chaves worked at Hybrid Payroll as the Director of Banking Relations at Colorado Credit Union, providing some of the earliest access to banking services to the cannabis industry. Welcome, Ms. Chaves.

I would now like to yield to Mr. Chabot to introduce our final witness.

Mr. CHABOT. Thank you, Madam Chair.

Our final witness will be Paul Larkin, a senior legal research fellow in the Meese Center for Legal and Judicial Studies at The Heritage Foundation. Mr. Larkin works on criminal justice policy, drug policy, and regulatory policy. Before joining Heritage, he held various positions within the Federal Government. At the U.S. Department Justice from 1984 to 1993, he served as an assistant to the Solicitor General and argued 27 cases before the U.S. Supreme Court. He also was an attorney in the Criminal Division's Organized Crime and Racketeering section. He also served as counsel to the Senate Judiciary Committee and head of the Crime Unit for Senator Orin Hatch. He received his law degree from Stanford Law School and received a master's in Public Policy from George Washington University. We thank you for being here, Mr. Larkin, and I yield back.

Chairwoman VELÁZQUEZ. The gentleman yields back.

And now, Ms. Penny, you are recognized for 5 minutes.

STATEMENTS OF SHANITA PENNY, PRESIDENT OF THE BOARD OF DIRECTORS, MINORITY CANNABIS BUSINESS ASSOCIATION; ERIC GOEPEL, FOUNDER AND CEO, VETERANS CANNABIS COALITION; DANA CHAVES, SENIOR VICE PRESIDENT AND DIRECTOR OF SPECIALTY BANKING, FIRST FEDERAL BANK; PAUL LARKIN, JOHN, BARBARA, AND VICTORIA RUMPEL SENIOR LEGAL RESEARCH FELLOW IN THE MEESE CENTER FOR LEGAL AND JUDICIAL STUDIES, THE HERITAGE FOUNDATION

STATEMENT OF SHANITA PENNY

Ms. PENNY. Good morning, Chairwoman Velázquez and members of the Committee. Thank you for your leadership on the effort to provide the regulated cannabis industry with access to Small Business Administration services.

As the president of MCBA, I lead an organization with the mission to create equal access to the cannabis industry to economically empower our communities. We work collaboratively to create equitable cannabis policy that encompasses restorative justice, community reinvestment, and of course, economic empowerment which I will focus on today.

Equitable economic development and empowerment unlock the full potential of the local economy by dismantling barriers and expanding opportunities for low-income people and communities of color. Through accountable public action and investment, the cannabis industry will help grow quality jobs and increase entrepreneurship, ownership, and wealth.

Our latest resource for policymakers, a model municipal social equity ordinance is intended to be used by municipalities that have adopted or are currently considering drafting ordinances to regulate, zone, and license local cannabis businesses. We started with the framework of the RESPECT Resolution introduced by Representative Barbara Lee last year and borrowed from social equity ordinances in development attempting to improve upon these pioneering works with the benefit of hindsight.

I have included a copy of our model ordinance in the appendix of my written testimony. And while we have worked tirelessly to ensure that cannabis policy is equitable on every level, our efforts have been crippled by a lack of access to and support from agencies like the SBA. State and municipal social equity and economic empowerment programs across the country are stalled because they are wasting precious resources testing various solutions when the answer is literally right in front of me.

State and municipal social equity programs are doing this work, but like all other small businesses, those wishing to start a state legal cannabis business should be able to access an agency that has, since its founding, delivered millions of loans, loan guarantees, contracts, counseling sessions, and other forms of assistance to small businesses.

Six figure to multi-million dollar startup costs make starting and growing cannabis businesses challenging for most, but it is especially difficult for state and city equity licensees. Without access to capital, they are vulnerable to predatory lending and business practices. These business owners need SBA support and resources to start and grow their businesses, not business partners and investors that take advantage of equity programs to enter the market early or tokenize their partners for market share.

Small cannabis businesses are often left scrambling to remain compliant when regulations change and must either find new sources of capital to cover the cost of changes or face significant fines for violations. In addition to regulatory changes, uncontrollable factors, such as insect infestation, crop failure, or a natural disaster can often leave business owners with insurmountable debt and no way of making up for lost revenue.

As Representative Earl Blumenauer, Chair of the Cannabis Caucus said earlier this year, "There will be no comprehensive cannabis legalization bill that does not include strong equity components."

Even narrowly tailored legislation, like the Safe Banking Act or the small business legislation we are discussing today must address business and social hardships that disproportionately impact minority businesses owners and our communities.

Representative Perlmutter's amendment added during markup created a requirement that Federal regulators collect data and provide an annual report to Congress on the availability of access to financial services for minority-owned cannabis businesses and that the Government Accountability Office carry out a study on the barriers to entry for minority-owned cannabis businesses.

MCBA suggests that Congress require SBA to: (a) collect data on the availability and provision of SBA products and services to minority-owned cannabis businesses; (b) issue an annual report to Congress; and (c) require SBA to collect and report data on the denial of loan and 8(a) program applications on the sole basis of a prior cannabis conviction that would not preclude participation in a state cannabis program.

We suggest that Congress direct the GAO to conduct a study on the barriers to marketplace entry, including access to SBA financial services for potential and existing minority-owned cannabis businesses and that Congress require that SBA not preclude participation in the 8(a) business development program or the granting of a Federal contract for cannabis-related business based solely on prior cannabis convictions, again, that do not preclude participation in state legal cannabis programs.

Last, we suggest that SBA lift the moratorium on new Community Advantage lenders to ensure sufficient lenders to provide equitable access to Community Advantage Loans in affected communities.

Thank you again for the opportunity to testify today. I look forward to working with you to create equitable cannabis policy that addresses the needs and concerns of often-forgotten stakeholders, small businesses, and the communities devastated by the failed war on drugs.

Chairwoman VELÁZQUEZ. Thank you, Ms. Penny.

Mr. Goepel, you are now recognized for 5 minutes.

STATEMENT OF ERIC GOEPEL

Mr. GOEPEL. Chairwoman Velázquez, Ranking Member Chabot, and members of the House Committee on Small Business, the Veterans Cannabis Coalition would like to thank you for the opportunity to address the Committee on veterans and cannabis issues currently under consideration. We would especially like to thank the Committee for its foresight in tackling some of the many challenges that have arisen as citizens grapple with the conflict between Federal and state laws regarding cannabis.

I served for 7 years on active duty in the U.S. Army, which included two deployments in Iraq. I cofounded Veterans Cannabis Coalition with Bill Ferguson, an infantry combat veteran of the invasion of Iraq and a long-time veteran advocate because we saw the need for effective treatments for vets and the potential for cannabis. We recognize in ourselves and in our sisters and brothers in arms the struggles with physical and mental health and, as they would say in the military, their second and third order effects that

negatively impacted our relationships, our housing, and our employment. For too many in our community, those struggles ended in suicide and overdose.

Our generation of veterans has the distinction of having served in the longest conflicts in U.S. history that saw nearly 7,000 service members killed in action while an estimated 100,000 veterans died at home of suicide and overdose. At least 20 veterans die by suicide and overdose a day, month after month, year after year, while their friends and family are left to pick up the pieces.

We know the factors leading to suicide and overdose are complex but they are understandable. And we have come to understand the often unspoken role that legal pharmaceuticals played in many untimely deaths. Hundreds of veterans have told us about being prescribed cocktails of opioids, sedatives, stimulants and numerous other psychotropic substances and experienced severe suicidal ideation or attempted suicide. Many more have discussed varying reactions to these drugs like major depression, sleep disturbances, or fits of rage.

Enter cannabis. The American Legion Iraq and Afghanistan Veterans of America have both conducted surveys asking veterans questions about cannabis. Across both surveys, at least one in five veterans reported using cannabis for their service-connected conditions. In our work, many of those same veterans who struggled under the weight of taking dozens of pills a day found immense relief through using cannabis, finding it far more effective at managing their injuries, like post-traumatic stress disorder and chronic pain, than drugs like anti-psychotics and ibuprofen.

This is where the Veteran Cannabis Coalition stands. We see the bright light between cannabis and improved health because we have witnessed the positive changes in the lives of many in our community who chose cannabis as an alternative to a slew of toxic, addictive pharmaceuticals. We also understand the broad potential of a plant that has numerous medical, commercial, and industrial applications and what that means for millions of veteran patients, employees, and employers.

Despite the current field of international multi-billion dollars cannabis corporations, the movement to reform cannabis laws in the U.S. was centered on the needs of patients, not the potential for profit. But while many patients in the past were able to rely in donation networks and co-ops, the scale required today to reach everyone interested in cannabis often necessitates complex supply chains made more complex by the double-edged sword of heavily regulated state systems and Federal prohibition.

These complexities favor heavily capitalized businesses who have the resources necessary to comply with burdensome rules and massive tax liabilities. This presents a huge threshold to entry for small businesses made more difficult because they are cut off from raising capital from traditional sources. Financial services, including basic access, like deposits in checking, are often denied to legal cannabis businesses by vendors who fear Federal reprisal. For example, Berkeley Patients Group, the Nation's longest-running cannabis dispensary and co-owned by a Gulf War veteran, has had their bank accounts closed nearly 40 times in 20 years. Multiple times per year, BPG is forced to pay taxes in the hundreds of thou-

sands of dollars in cash at great personal risk to both employees and government workers who have to deal with massive amounts of currency.

The denial of access to traditional financing forces cannabis businesses to seek vendors offering far less favorable terms. Ancillary services in the cannabis industry, including payroll, IT, and insurance are extremely limited due to potential sanctions by the Federal Government on firms that participate in any way in the cannabis industry. This, in turn, enables those providers who do participate to charge exorbitant rates. Just as the Federal and state conflict in cannabis laws damages the ability of cannabis touching small businesses to be successful, it discourages the participation of indirect businesses which further negatively impacts direct cannabis businesses and their ability to deliver accessible, affordable medicine.

Millions of patients across the country have a need for equal access to cannabis, which we define as a combination of affordability, physical accessibility, and a standardized quality. We have seen the benefits veterans have experienced using and working with cannabis and we know that in making those benefits as widely available as possible, we can work to reduce the suicide and overdose epidemic that has devastated our community. But everyone who uses legal cannabis relies on licensed cultivators, licensed manufacturers, and retailers and dozens of ancillary businesses that interact with them. We want to see industries small businesses delivering medicine to those in need, developing new devices and treatments, and fully exploring all the pathways the plant contains. And those businesses can be empowered by the actions of this Committee.

We hope that you will continue supporting this discussion and work with stakeholders to fulfill the promise and ingenuity of American small businesses in this new and important sector.

Thank you for your time.

Chairwoman VELÁZQUEZ. Thank you, Mr. Goepel.

Ms. Chaves, you are now recognized for 5 minutes.

STATEMENT OF DANA CHAVES

Ms. CHAVES. Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee, I am Dana Chaves, and I am the senior vice president and director of Specialty Banking Services at First Federal Bank of Florida. Thank you for the opportunity to testify before the Committee today to discuss the importance of unlocking access to affordable capital for businesses in the regulated cannabis industry. I am pleased to provide a first-hand account of how local community banks can invest in aspiring entrepreneurs and new businesses to help facilitate economic development and job growth, especially in underserved areas. I will briefly summarize my written testimony and I look forward to answering your questions.

First Federal Bank is a federally chartered mutual bank which was established in 1962. We have over 750 employees, with over 24 branches, 17 mortgage offices, and operate in eight states with almost \$2 billion in total assets. And that encompasses nearly 75,000 clients.

We launched our cannabis banking program on April 1, 2019, and to date, we have opened 62 accounts tied to marijuana-related businesses. We classify these accounts into three separate tiers. Tier I are direct plant touching businesses, such as dispensaries and cultivators; Tier II are ancillary businesses, vendors, investment accounts, and depository accounts; and Tier III are businesses that are involved in the medical side, like the treatment centers or doctors' offices.

We also serve CBD companies, as they, too, are dealing with issues related to financial services. We have over 55 Tier I, II, and III pending applications and several are currently under our due diligence review. This process can take up to several weeks to complete.

I am also testifying on behalf of the National Cannabis Industry Association (NCIA), the largest national trade association dedicated to protecting state-regulated cannabis businesses and advancing policy reforms needed to align Federal and state cannabis laws. Currently, I am the Chair of the NCIA Banking Access Committee and have helped publish several industry reports to assist and educate financial institutions and state regulatory agencies on cannabis-related banking.

To date, 47 states and the District of Columbia, as well as Guam, the Northern Mariana Islands, and Puerto Rico, have passed legislation authorizing some form of cannabis for regulated medical or adult-use purposes. Additionally, 33 states have enacted laws regulating the commercial production and sale of medical or adult-use marijuana, excuse me, including my home state of Florida. However, because cannabis remains a Schedule I drug under the Federal Controlled Substances Act, licensed cannabis-related businesses have been effectively locked out of accessing basic financial services, including the traditional loans and programs established by the Small Business Administration, such as the 7(a) loan guaranty program, the 504 Certified Development Company loan guaranty program, the Microloan program, and disaster relief efforts.

With my testimony today, I hope this Committee will develop and pass legislation that expands access to business loans and lending programs under the jurisdiction of the SBA for cannabis-related businesses, many of which are led by aspiring entrepreneurs or are minority or women-owned. Also, I hope the members of the Committee will also support H.R. 1595, the Secure and Fair Enforcement Banking Act. The bill, which currently has over 200 bipartisan cosponsors, would permit banking and depository services to licensed cannabis-related businesses, including ancillary businesses.

Given the lack of clarity for cannabis banking, as well as the inability for SBA to partner with community banks to assist MRBs, I have seen, and continue to see, those involved in the state-regulated cannabis industry struggle. As an example, I have an executive who left a Fortune 500 to work for one of our clients who was refinancing his home with a large national bank. The executive had a longstanding relationship with this bank and literally 30 minutes before they were closing his loan they canceled it and decided they could not help him because of where his funds were coming from. We had to step in and assist him with refinancing his home. So

while this example had a positive outcome, First Federal has several requests for lending from MRB clients and we are not in a position to provide these services due to the current regulatory environment.

Since 2004, the U.S. Department of Treasury's financial crime enforcement network has maintained guidance regarding the conditions under which financial institutions may work with cannabis-related businesses. These conditions include an array of Federal requirements financial institutions must meet to provide banking services to licensed cannabis-related businesses, such as preventing distribution of cannabis to minors, preventing revenue from the sale of cannabis to criminal enterprises and cartels, ensuring cannabis activities and transactions are not being diverted to a state where it is not legal, among others. As a provider of small business loans, it is frustrating that the SBA has not incorporated a similar approach.

I want to thank the Chair, Ranking Member, and Committee, for your time to discuss expanding access to SBA loan programs for the regulated cannabis industry. This topic is important and has economic consequences for businesses and community banks all across America. I urge the Committee to develop and pass legislation that allows SBA to provide the regulated cannabis industry with affordable capital necessary to increase economic opportunity and support job growth.

Thank you again for the opportunity to submit my testimony today.

Chairwoman VELÁZQUEZ. Thank you, Ms. Chaves.

Mr. Larkin, you are now recognized for 5 minutes.

STATEMENT OF PAUL LARKIN

Mr. LARKIN. Madam Chairwoman, Mr. Ranking Member, and members of the Committee.

I made four points in my written statement and I will summarize only one of them here, and that is this: If Congress were to legalize recreational marijuana use, it should require that states own and operate distribution facilities.

Debate over the supply aspect of marijuana legalization is generally focused on the difference between distribution by large and small-scale businesses. I think that is a mistake because those are not the only two options. Distribution by whatever size business is not just the province of private parties, and I think it is important to consider other distribution mechanism.

Now, why? It is important to do this because marijuana is not an ordinary commercial product, like batteries or flashlights. It is much closer to alcohol or tobacco. Long-term use can lead to severe problems. We know a certain percentage of people who use it on a long-term basis will become physically dependent or addicted. A certain percentage will suffer severe mental disorders. And people who use it, even on a short-term basis and drive can lead to havoc on the highways. So it is not your average commercial product. It is very different. All of which, I think, can wind up giving rise to the conclusion that we have to be careful about how we wind up legalizing it if that is your decision.

Now, moderate use of marijuana by adults at home is not likely to lead to large-scale social problems or major individual problems. Adults who use a few times a week when not driving, when not working, when not caring for children is going to be an activity that is fairly harmless. But that might describe only about half of cannabis users, and that practice describes only 2 percent of cannabis use. Okay? Which is 2 percent of consumption and only 2 percent of sales and profits. A small number of daily or dependent users consume far more marijuana than the average person who does it on an occasional basis.

Cannabis consumption is like alcohol consumption. It follows the 80-20 rule. Eighty percent of consumption is by 20 percent of the users. What does that mean in practice? Since 1996, since cannabis use has been legalized in various states, it has changed from being a weekend activity to sometimes being a daily activity. It has become more like smoking tobacco than drinking alcohol. The number of Americans who self-report using cannabis daily or near daily has increased from roughly 1 million in 1992 to roughly 8 million in 2016. That is a considerable increase.

Now, aggravating those factors is this: Just under one-half of consumption is by people who either have been in treatment for some type of substance use disorder or have the symptoms of a substance use disorder and just have not had treatment for it. And since being addicted or being physically dependent is not an activity that generally is one that people consider laudatory, the numbers I have given you may even be conservative. They may even be higher.

Moreover, about 60 percent of consumption is by people with a high school education or less, which means they are far more sensitive to declines in prices and prices have dropped, sharply, in fact.

But what does that mean? From the perspective of cannabis vendors, marijuana abuse is not an unfortunate side effect of legalization. No. Marijuana abuse is the goal and marijuana abusers are the target demographic. That is the result of the 80-20 rule.

Now, the trick, as Professor Mark Kleiman of NYU has said, if you are going to legalize it, is to try to keep at bay the logic of the market because the logic of the market has a tendency to create and exploit people with substance abuse disorders. How then do you do that? There are at least two other options that should be debated. One is endorsed by Professor Jonathan Caulkins of the Carnegie Mellon University. He says the sale should be limited simply to not-for-profit companies. Another option is the one that Professor Mark Kleiman of NYU endorses. He says that the sale should be limited to government businesses, similar to what happens in my own state of Virginia for distilled spirits. I think Professor Kleiman has the better of the argument for several reasons. I mentioned them. Let me just mention one.

There is no First Amendment problem whatsoever to preventing advertising of marijuana if it is sold by the states. States are not persons. They have no First Amendment rights and it is easier for the states to keep track of their own stores and their own people.

For these reasons, I hope you will, if you decide to legalize it, consider these other two options and avoid recreating what we have with cigarettes and tobacco. Thank you.

Chairwoman VELAZQUEZ. Thank you, Mr. Larkin.

And thank you to all the witnesses. I will begin by recognizing myself for 5 minutes.

Ms. PENNY. Recent data shows the legal U.S. cannabis industry has a high rate of women in leadership roles with a 36 percent average across the industry and the highest being 63 percent in high-level executive positions in testing labs. We also know that minority business owners generally face greater challenges in accessing affordable capital to start, expand, and operate their businesses, and that the SBA has historically played a role in providing access to affordable capital in emerging industries such as technology and communication services. Should SBA loan programs and entrepreneurial development programs be accessible to small firms in the cannabis industry?

Ms. PENNY. Absolutely. We do not have access to institutional lending currently, and so we are left to finance these businesses with private equity. This is usually a very expensive loan. And because most people are not savvy enough, they typically get into situations where as they continue to raise money they lose equity. And so these businesses that were once minority owned, women owned, quickly become, you know, something that is not that.

Chairwoman VELAZQUEZ. Thank you.

Mr. Goepel, we know that generally veterans try to give back and help fellow veterans, including by hiring them in their businesses. However, we also heard that veterans who receive benefits from the VA have expressed hesitation before entering the legitimate cannabis industry, either as entrepreneurs or as employees for fear of losing their VA benefits. Should the VA issue guidance clarifying that veterans employed in the legitimate cannabis industry will not lose their benefits simply because of the industry in which they are employed?

Mr. GOEPEL. Thank you, Chairwoman.

Currently, the VA has a directive stating that veterans who self-disclose cannabis use within the VA healthcare system will not be denied benefits or stripped of benefits. However, when you are talking about other non-healthcare related benefits, like VA home loans, the VA looks at where the source of your income is coming from. And if it sees that the major source of your income is coming from a cannabis-related enterprise, then essentially you do not have income. So it disqualifies a lot of veterans because the VA essentially does not recognize the validity of the business they are working in.

Chairwoman VELÁZQUEZ. So should SBA and the VA enter into a partnership designed to enhance entrepreneurial and employment opportunities for veterans in the legitimate cannabis industry and making sure that because you work as an employee or as a business owner, you would not be denied any type of benefits or your income counting for the purposes of acquiring any type of property?

Mr. GOEPEL. That clarification would go a long way to alleviating a lot of the stress and hesitation veterans experience, you

know, entering or working in the cannabis industry, essentially being under the gun of some sort of Federal sanction if it were to come out in certain circumstances that they were working in the cannabis industry. So, yes, we would certainly support any effort to, you know, the SBA or, excuse me, the Small Business Committee and the VA working together to clarify that.

Chairwoman VELAZQUEZ. Thank you.

Ms. CHAVES, SBA policy prohibits SBA-backed loans from going to direct or indirect cannabis businesses. The policy defines an indirect cannabis business as one that generates any revenue from the sale of a good or service to a direct cannabis business. That is an incredibly broad prohibition. As a banker, what kind of impact does this have on the small business sector and local communities?

Ms. CHAVES. It has a very large impact. These small businesses are not allowed to grow. They are not allowed to expand and help the communities and provide jobs in underserved areas or any other areas. So these loans and this clarification would help immensely for us to be able to help these businesses.

Chairwoman VELAZQUEZ. And what are the potential, unintended consequences of denying legitimate businesses traditional banking services and forcing them to operate on an all-cash basis?

Ms. CHAVES. The consequences are huge. Operating in an all-cash environment creates a community safety risk as far as their employees, the staff, and the community itself. We do take some cash deposits but we never take a cash deposition in our financial institution. It has always been armored car service. So these risks are huge and they can cause severe damage.

Chairwoman VELAZQUEZ. Thank you.

My time is up. My time has expired.

And now I recognize the Ranking Member, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you, Madam Chair.

The Chair started out by asking a question about women, so Ms. Penny, let me ask you this: Are you aware that marijuana usage among pregnant women has doubled in recent years?

Ms. PENNY. I was not aware of that. I am aware of the fact that a lot of people have replaced harmful pharmaceuticals with cannabis. And so if pregnant women are falling into that category it may be some truth to that statement.

Mr. CHABOT. Let me follow up. Are you aware that use of marijuana by a pregnant woman can cause premature birth? It can cause low birth weight, both of which can be harmful to the newborn child and it can cause other problems as well; would you agree with that?

Ms. PENNY. I have not seen this science or research that says that specifically. I am aware of what smoking does. Pregnant women today—

Mr. CHABOT. Pregnant women should not be smoking either.

Ms. PENNY. Pregnant women today have a lot of options for consuming cannabis safely through topicals, low THC forms of the medicine itself.

Mr. CHABOT. Okay.

Mr. Larkin, let me move to you. Would you characterize the growing, cultivating, transporting, and selling of a product, any product, across state lines, interstate commerce?

Mr. LARKIN. Yes, sir.

Mr. CHABOT. Okay. And does the U.S. Constitution give the authority to the Federal Government to “regulate” commerce among the several states or does it just leave it up to the states to figure out?

Mr. LARKIN. The Constitution expressly grants that power to Congress.

Mr. CHABOT. Thank you.

Would you think it fair for a state, any state, let’s say Vermont since we do not have anybody on this Committee from Vermont, to opt out of a Federal law, perhaps the Clean Water Act or even the Internal Revenue Code by plebiscite or a vote of the people in that state to hold a referendum and say, well, we do not want to pay any more Federal taxes. Why on earth if we would not do it for those things would we do it for marijuana, for example?

Mr. LARKIN. I am searching for that answer myself. Historically, it has been up to Congress to decide whether to exempt states from Federal law. It is not up to the states to decide voluntarily to leave.

Mr. CHABOT. Thank you.

Ms. Chaves, let me ask you this. The additional usage of marijuana, what effect do you think that would have on injuries and deaths on the Nation’s roads and highways, if any?

Ms. CHAVES. I do not think that the usage is any different than other substances, like alcohol.

Mr. CHABOT. Okay. And if people are drinking and driving, that can cause an increase in the injuries and deaths on the highways; is that correct?

Ms. CHAVES. Definitely.

Mr. CHABOT. And if marijuana usages goes up and people are driving while they are having ingested in some manner marijuana, is it not reasonable to assume that injuries and deaths on the Nation’s highways would go up as well?

Ms. CHAVES. I am not aware of any studies but there is a possibility. It depends on who is behind the wheel. And there is always that risk.

Mr. CHABOT. Thank you very much.

Let me go back to you, Mr. Larkin. Justice Brandeis famously stated that we should allow the states to serve as laboratories to try out novel social and economic experiments without risk to the rest of the country. Why should we not apply that to marijuana in this particular instance?

Mr. LARKIN. It is a great phrase but it has its limitations because after all, Dr. Frankenstein had a laboratory, too. What we have decided for a very long time, 80 plus years, in fact, is that we should leave, for example, the question of whether a particular item is a drug. And if it is a drug, whether it is safe and effective to the Food and Drug Administration to resolve.

In 1937, Congress in the Marijuana Tax Act effectively prohibited the interstate distribution of marijuana. The following year, in the Federal Food, Drug, and Cosmetic Act, it entrusted the FDA

with the responsibility to decide what is safe, and in 1962, also what is effective. If the question is whether marijuana is a safe and effective drug, we should leave it to the Food and Drug Administration to decide. We should not leave it to the states. That is exactly the wrong way about going about this. We do not by plebiscite decide what drugs can be distributed in interstate commerce because they are safe or effective. We rely on the expert judgment of the commissioner of Food and Drugs and the staff at the FDA. We should do the same with respect to all the drugs that are regulated by Congress.

Mr. CHABOT. I am just about out of time.

Mr. Goepel, let me ask you this to conclude. Are you aware that studies have shown that marijuana usage among teens oftentimes leads to suicidal thoughts?

Mr. GOEPEL. I believe a lot of those studies that link psychosis or suicide or schizophrenia to cannabis use run into major issues when it comes to directionality.

Mr. CHABOT. Would you agree they are linked to anxiety and depression and memory loss and a number of other—

Mr. GOEPEL. I mean, there have been links but there is not anywhere close to a definitive correlation between the two.

Mr. CHABOT. My time is expired. Thank you. Thank the panel.

Chairwoman VELÁZQUEZ. The gentleman's time has expired.

And now we recognize Mr. Jason Crow, Chairman of the Subcommittee on Innovation and Workforce Development from Colorado for 5 minutes.

Mr. CROW. Thank you, Chairwoman.

Mr. Goepel, thank you for joining us today. I also am a fellow veteran, and anecdotally through my work with veterans in Colorado, I have seen and heard what you described of earlier, this effect of veterans going to cannabis to self-medicate and going away from more lethal prescription drugs and opioids and the lifesaving impact that that has had. Can you just elaborate a little bit more on some of the experiences that you have had on that and some of the data that suggests that this is a positive impact for veterans overall?

Mr. GOEPEL. Sure. So, for example, the Department of Veterans Affairs in a 2014 study basically found that half of all veterans have chronic pain. Untreated chronic pain is one of the biggest drivers in suicide. What the Department of Veteran Affairs and let's just say more broadly, the private healthcare system would provide to veterans who have indications like PTSD and chronic pain, anxiety, depression, is essentially a cocktail of medications individually that all carry risks combined. There is zero research to back giving someone combinations of sedatives, opioids, stimulants, and a variety of other drugs that are intended to treat these very narrow indications, but in turn, create other problems which require other medications to treat. And now you have veterans taking 20, 40 pills a day, you know, between 6, 8, 10, 12 medications a day. That is not a sustainable lifestyle. Certainly, it is not a sustainable treatment program. And yet, that is what the VA and private health care have provided us.

So obviously, we see a lot in our community where people have tried the pharmaceutical route. They have been driven near sui-

cide. Someone, usually a friend or someone trusted, comes to them and brings them cannabis and the relief that they experience is almost immediate and incredible comparative to years of not sleeping, for example, where a lot of veterans are taking medication either because of their underlying conditions or the medications themselves are unable to really ever stabilize or get healthy.

Mr. CROW. And I would add to that that there is this tradition of veterans protecting and helping other veterans. And what I have seen in Colorado is veterans who have had positive experience with cannabis as an alternative to more lethal drugs and opioids in particular are starting cannabis businesses to help their fellow veterans. And I am assuming you have seen that at a national level as well?

Mr. GOEPEL. Yes. We deal with veteran entrepreneurs who generally have started out with the intent to, yes, they see some future in cannabis as an industry but they also see the benefit that being a cannabis entrepreneur can bring to others in the community.

Mr. CROW. And Ms. Penny, as you know, I am from Colorado, and we have been one of the leaders in cannabis legalization and creating a system that works well and is responsible to the community. And I have a number of cannabis businesses in my district and I have yet to see and ever run into a business that feels like running afoul of the law or giving cannabis to individuals who are abusing it is a good business model. In fact, I see that people go out of their way to actually be responsible and to be good stewards of the community and do it the right way because they want to serve as an example for the community that this can be done. And I just would love your thoughts on that and whether that has been your experience at a national level as well.

Ms. PENNY. Yes. Colorado has been a model for a lot of the other states that have legalized. You see elected officials traveling to Colorado to visit these businesses. You see interested parties who are entering the cannabis industry go to Colorado. You have a great deal of small business owners and entrepreneurs in Colorado. A lot of the other state programs were not created in that way and as the Colorado market matures, regulatory changes that have taken place have really impacted the small businesses there. So access to SBA services and institutional lending will impact Colorado greater, but the impact that it can have on new programs and developing programs is an even larger opportunity.

Mr. CROW. Thank you, Madam Chair. I yield back.

Chairwoman VELAZQUEZ. The gentleman yields back.

The gentleman from Minnesota, Mr. Hagedorn, is recognized for 5 minutes.

Mr. HAGEDORN. Madam Chair, thank you for the opportunity and holding this hearing. Ranking Member Chabot, and the rest of you, the witnesses.

At full disclosure, I am one of those that grew up in the Nancy Reagan era of "Just Say No" but I am not here today to pass any judgment. I just want to talk about the issue. In fact, I would like to switch gears a little bit from the legalization of marijuana for recreational purposes and medical to the concept of the industrial hemp and using low dose THC for pain management and things of that nature. We have businesses in southern Minnesota that are

exploring this. Farmers, manufacturers. I toured a plant recent, a whole production facility in Waseca, Minnesota, and listened intently as to what was going on.

There are a lot of issues that might be impediments as you are talking about in this area for industrial hemp and for the pain management, the oil. And you are looking at it, as farmers, and you want to go out and grow, but you can have some crosspollination problems where if two farmers are too close together and one plant impacts the other, it can destroy crops. And you have other situations where right now for agriculture there is no specialty crop insurance for industrial hemp. That is something they are looking into. I talked with the Secretary of Agriculture and others on down and they say maybe in a couple of years as they move forward, since this is an emerging crop, that might be something they look at.

But, you know, there are other areas. Regulations. Federal, state, and other regulations as to whether or not the products that are produced, are they pure? Do they meet standards? Are they going to do what they say? Do they have the level of oil in there that they claim? You are looking at international trade issues where the Chinese dump product that might not be sufficient and good for the American people or again, follow up on their claims.

The Ranking Member brought up the commerce clause and the banking issues. And there are regulations by the police and investigations to make sure that the specialty crop for industrial hemp is not something other that the state does not allow or should not be grown.

So those are the types of things that we are looking at and I am going to try and represent the district in the interest of everyone at heart. But just a couple of questions.

Is it Goepel? Is that how you are pronouncing it, sir?

Mr. GOEPEL. Yes, sir.

Mr. HAGEDORN. I appreciate our advocacy for veterans and everything that you are trying to do to make sure we can prevent suicides, help them manage pain properly. Let me live the best life possible. Give them the benefits they deserve and everything else. One of the things I am working on with some members is to try to make sure we have choice for veterans for mental health capacities and others. They should be able to go choose the mental health provider of their choice, not necessarily have to rely on the VA, and get that as soon as possible.

But for veterans that are dealing with pain management, do you think that—you advocate for the medical marijuana, but do you think that they should have to try low dose oils with THC levels lower before they would move on to medical marijuana?

Mr. GOEPEL. I think you make a great point, Congressman. Basically, there needs to be some sort of established protocol for introducing people to cannabis. And introducing them in a way that allows them to find the right dosage and the right ingestion method to meet whatever their healthcare needs are. We do not necessarily advocate for just the straight smoking of cannabis.

Mr. HAGEDORN. So those types of standards you think might be okay. What about the idea of finding other delivery methods

than smoking it? Would that be beneficial in the long run, do you believe?

Mr. GOEPEL. Most definitely. We have seen, especially in California, for example, and Colorado, certainly, the proliferation of different methods of ingestion. And many of them are more efficient than smoking.

Mr. HAGEDORN. All right.

Mr. Larkin, I was going to go down this road because I met with a law enforcement officers in southern Minnesota, and they all kind of tell me the same thing. They tell me that the marijuana of today is a lot different than it was 20 or 30 years ago. It is many, many times stronger. They believe, the law enforcement, that it is a gateway drug. They believe that for that reason they oppose it. You seem to have a lot of knowledge in this area. Do you have any comment to that?

Mr. LARKIN. Yes. First, it is far more powerful.

Mr. CHABOT. The mic. The mic there. Pull the mic towards you.

Mr. LARKIN. Oh, I apologize.

The marijuana that people used back in the 1960s when it became a symbol of opposition to the government was maybe 1 to 3 percent THC. Nowadays, you can have marijuana that is in the teens. You can have hashish that is higher. And if you have the right facilities, you can manufacture a substance that can be used that is up in the 90s. So as a factual matter, marijuana can be far more potent today than it was back then.

Mr. HAGEDORN. All right. My time is up. I just have one more quick question.

On the issue of liability, dispensaries, should they be held to the same standards, for instance, as maybe bars and others where if you overserve or you do things in a bad capacity that they should be liable for problems?

Mr. LARKIN. Absolutely. If they are contributing——

Chairwoman VELAZQUEZ. Be brief, please. Time has expired.

Mr. LARKIN. Yes, yes, yes, yes.

Mr. HAGEDORN. Thank you, Chair.

Mr. LARKIN. If they are contributing to injuries and deaths on the highway, they should be responsible as well.

Mr. HAGEDORN. I am not saying I subscribe to all that. I am just asking your opinion. Thank you.

Thank you, Chair. I yield back.

Chairwoman VELAZQUEZ. Thank you. The gentleman's time has expired.

Now I recognize the vice Chair of the Committee, Mr. Evans from Pennsylvania for 5 minutes.

Mr. EVANS. Thank you, Madam Chair. And I thank the Ranking Member for the purpose of this hearing.

I come from the Commonwealth of Pennsylvania. When I was in the state legislature I voted for medical marijuana, and it is ironic that I am here. I was on the Agriculture Committee and I voted for the Farm Bill, which we deal with the issue of hemp. So the question I want to go to is Ms. Perry. A couple questions real quick.

Can you explain how the 8(a) program you spoke to about leveling the playing field for economic disadvantaged people, and why

is it important for SBA to allow individuals with prior cannabis convictions to participate?

Ms. PENNY. Thank you. It is important for us to allow the people who have been impacted by prohibition to participate in this industry because essentially, the industry was built on their backs. So we want to embrace them. They have experience that with the proper training and polishing, they could be business leaders, innovators, thought leaders as this industry evolves. And so when we look at the services and support offered by SBA, we want to make sure that we are not creating an environment where these programs are assisting people who do not really need additional assistance. We have seen programs in the past that have been kind of hijacked. You know, a white woman-owned business being positioned as a minority-owned business. We do not want to see that in the cannabis industry. So we want to be specific in these targeted funds for the groups that have been impacted. We want to see specific funds for minorities, and we want to identify those groups that were impacted by the war on drugs. And we know that in this country, black and brown people are four times more likely to be arrested for cannabis possession than anyone else, even with similar usage.

Mr. EVANS. Okay, Ms. Penny, can you explain the types of jobs this industry created from the cultivating to distribution?

Ms. PENNY. Sure. You have everything from the horticulturist, or the botanist, the person responsible for that strategy and what you are going to grow. You then have processors, people with chemistry backgrounds, chemical engineers, folks that understand formulations and how to make medicine, down into the dispensary portion of the supply chain. You have retail management, pharmacists. To support these businesses, you have a ton of professional services, the same services that any other business would have. In the next few years, cannabis is going to outpace manufacturing in the number of jobs created, and if we are not developing a pipeline of talent, there is no way that we are going to have a diverse industry. And the SBA also needs the support of the existing operators so that you have expertise at the SBDC, so that you can actually provide the technical assistance that is promised in most of these social equity and economic empowerment programs.

Mr. EVANS. Mr. Goepel, what are some of the obstacles unique to veteran startups in the cannabis industry? And I am going to do a follow up so you can get it in. What can the Small Business Administration do to focus its existing efforts to empower the veteran-owned business population?

Mr. GOEPEL. Well, we can look at, excuse me, the Committee can look at the declining rate of veteran entrepreneurship and perhaps see an opportunity in cannabis to enable veterans who have an interest, who have a connection to cannabis as patients oftentimes to participate. And I think one of the best ways to do that is training and loan programs. And that is something that the Small Business Committee already oversees at the SBA. There is a lot of opportunity for veterans to become valuable members of the industry. They already possess a lot of talents and skills that would be useful in the context of cannabis. And so I think there

are a lot of areas there for the Committee to empower and incentivize vets.

Mr. EVANS. One last question to Ms. Penny. What do low-income neighborhoods and communities of color stand to lose if they are left out of the cannabis policy?

Ms. PENNY. They will remain devastated. They will remain food deserts. They will remain places where you cannot access health care or any of the other things that you need in any community.

Mr. EVANS. I yield back the balance of my time. Thank you.

Chairwoman VELAZQUEZ. The gentleman yields back.

And the gentleman from Tennessee, Mr. Burchett is recognized for 5 minutes.

Mr. BURCHETT. Thank you, Chairlady and Ranking Member.

I speak to a lot of groups. One of the groups I speak to, I have in the past, is the Libertarian group. And they brought to me a lot of these statistics, facts and figures, one way or the other. But I think the reality is we can talk about the medicinal purposes and the oils and everything, but people want to get high. I mean, that is the reality of this industry, I believe. And I think that if we do not acknowledge that and the effects that that could have on society, then I think we are missing the boat.

Mr. Larkin, do you think it makes sense for the Federal Government to allow tobacco to be sold under Federal regulation but to authorize states to have complete control over marijuana?

Mr. LARKIN. No, sir. I think that would be quite silly.

In 2009, Congress decided for the first time heavily to get into the business of regulating the safety, to the extent you can, of cigarettes and the like. They empowered the FDA to regulate cigarettes, tobacco, and the like. There is no reason not to do the same thing here.

Mr. BURCHETT. Okay.

Mr. LARKIN. Oh, and by the way, you mentioned the real reason. You know, you are not alone in that. Dr. Peter Bach wrote an article in The Wall Street Journal earlier this year entitled, "If weed is medicine, so is Budweiser." So it is not just you that thinks what we are really talking about is the value in having that euphoric feeling. He is a physician at Memorial Sloan Kettering Cancer Institute. He said the exact same thing.

Mr. BURCHETT. Yes, sir. Because I do know that, for instance, THC can be created in the lab and it can be through the use, I believe the drug they use is called Marinol, and it has the same euphoric effect that would be just of smoking marijuana from what I understand.

Mr. LARKIN. Yes.

Mr. BURCHETT. And I do not support that but it is just the reality of where we are at. And at some point I think folks should just say that.

I would ask the whole Committee, the group that is gathered here, what small business owners and what sector of small businesses would benefit and which would be most directly hurt if we were to legalize marijuana? Because we have available dollars. You are going to spend them on something. I mean, is it going to affect, as you said, is it going to affect Budweiser or is it going to affect something else? Because it is not going to be this new money is just

going to appear. People have available funds to spend on something. What will it affect? And I would ask all the Committee members up here.

Mr. LARKIN. Well, I am glad to start. I think to the extent people use marijuana for the euphoric effect it creates, it is going to create a similar effect to what you have when you use alcohol. So whatever they take money away from to purchase alcohol, they will probably also use that same source to purchase marijuana. Or they may take even more because they may purchase alcohol and marijuana because the two are often used together.

Mr. GOEPEL. If I could answer that question. I think the idea that the vast majority of consumers are using cannabis specifically to get high very much undermines the medical value that especially veterans have experienced. The drugs that veterans are prescribed, opioids, sedatives, stimulants, antipsychotics, a lot of these all carry euphoria as a side effect but we do not necessarily dismiss those things just because they have a euphoria attached to them. Now, they are also very psychoactive and incredibly impactful on mental health and other aspects of physical health. So we have a situation here where I believe cannabis is a dual purpose substance, whereas, cannabis can be used recreationally, it can be used medicinally. That cannot be said the same for alcohol or tobacco because there are no children who are seizure-free because they are drinking Budweiser.

Mr. BURCHETT. I realize that except the CBD oils and things, they are, as was stated earlier, I believe 47 states have something, as does my own state. So it would go back to the original premise though. I mean, if those things are already there, then what is the further purpose of marijuana past that?

Mr. GOEPEL. I mean, there still needs to be massive amounts of research. I mean, we want to see cannabis medications in the Department of Veterans Affairs and we cannot get there without research. And we cannot get research without ending prohibition.

Mr. BURCHETT. Ma'am?

Ms. CHAVES. I am not here to discuss the particulars of the components of the drug itself because that is not my area of expertise. My area of expertise is in the banking of these businesses and getting the cash off the streets.

Chairwoman VELAZQUEZ. The gentleman's time has expired.

The gentlelady from Iowa, Ms. Finkenauer, Chairwoman of the Subcommittee on Rural Development, Agriculture, Trade and Entrepreneurship, is recognized for 5 minutes.

Ms. FINKENAUER. Thank you, Madam Chair. And thank you all for being here today, sharing your views, but then also your expertise and scientific facts. It means a great deal that you took the time to come and chat with us today.

And I have to tell you, before I had the great honor to be a congresswoman from Iowa's 1st District, I was also in the State House in Iowa for 4 years. So I got an up-close experience of the journey of cannabis law and regulations very specifically in my home state. And I would like to share with you all just a moment that had really impacted myself as a legislator and also on this issue in particular.

It was 2017. We were at the end of session, so it was the last night of session. We were all there until I think it was 7 o'clock in the morning trying to get something done. There were two bills left that we were trying to get done. One had to do with CBD oil and medical cannabis, and one had to do with water quality. And I remember that night, again, folks showing up into the gallery who had been working on both of these issues, and I walked up there and I got to meet a little boy named Brady and his mom Quincy. You see, Brady and Quincy are of the Sac and Fox Tribe and they are Meskwaki. And so they had come back to Iowa after living in Colorado for a couple of years so Brady could get the treatment that he needed because he has seizures that basically immobilize him. And for years had actually, again, lived in Colorado to be able to treat that. But because of being Sac and Fox, and also obviously Meskwaki, wanted to come back home and be with family. And the year or two before this they came to the state capital and Quincy was told by the state representative that if you care about your son you will go back to Colorado. And I will never forget hearing that story, and I will never forget those moments with Quincy and Brady up in that gallery as I heard their story personally. And again, I knew that we had a heck of a lot of work to do in Iowa and across the country to educate folks about, again, cannabis and its uses. And again, it was quite the journey in Iowa. That year, we did end up passing something that was not what we all wanted but it was a pilot program that made CBD oil available to patients with eligible medical conditions like cancer or Parkinson's disease. Unfortunately, it left off many issues that are considered women's health issues, like polycystic ovary syndrome, endometriosis, just to name a few. And then this year, the State House did make some serious gains trying to expand access to other cannabis products to help treat patients. Unfortunately, and again, many gains were made bipartisanly in the state of Iowa, passing both the Republican-controlled State House and State Senate, but just a few weeks ago our governor happened to veto that bill, the reasons being she said addiction. Although earlier that week she signed a sports betting bill. So again, it is very frustrating on my end being an Iowan and hearing stories that so many of my constituents have dealt with and dealing with, again, lack of certainty and regulations and needing more certainty. And part of that is having access to medical cannabis and cannabis in general in the state of Iowa and making sure that we have the producers in Iowa. And one of the companies that I have talked with, MedPharm, expressed their frustrations where right now they are manufacturing in Iowa and they are trying to make safe, effective products but at the same time are unsure every single day about what the future of the industry looks like.

And I do not know if Ms. Penny, I know we only have a few minutes here, but if you can touch on what the uncertainty that we see in states like Iowa can cause manufacturers to be able to deliver product and then also grow their business when there is such an opportunity to do so.

Ms. PENNY. Sure. The contradiction between the Federal Government and the state government is a reason for any business owner to pause. When you are well-funded though you will notice

that you do not pause as much. When the Cole Memo was rescinded, the members of MCBA were the only people in the industry that I really felt were really concerned because everybody else was going to be able to work around it. When you start to think about a small farmer and their opportunity, we have to end Federal prohibition so that they can feel comfortable getting into this industry and creating the businesses that then create jobs and tax revenues for those communities.

Ms. FINKENAUER. Thank you, Ms. Penny. I appreciate it. And I know my time is about to expire, so I yield back. And thank you, Madam Chair.

Chairwoman VELÁZQUEZ. The gentlelady yields back.

And now we recognize the Chairman of the Subcommittee on Contracting and Infrastructure from Maine, Mr. Golden, for 5 minutes.

Mr. GOLDEN. Thank you, Madam Chair.

Two questions if I have time. First, for Mr. Goepel. You are getting asked a lot about this but I just wanted to give you more opportunities to talk about it because I think it is important.

I was actually somewhat concerned and skeptical early on about the potential harmful side effects of marijuana use on veterans. I am one myself in Afghanistan and Iraq. I was diagnosed with post-traumatic stress coming home from Iraq back in 2006. But I have just heard repeatedly from veterans and mental health care experts with specialization in providing care to veterans that it can be life-changing in a positive way for a lot of veterans. And so I have come around to believing it. But I have also heard those same professionals and veterans say that if not used correctly it can have negative impacts as well. You know, there is a fine line there and veterans need guidance. And they need help finding the right approach.

And of course, I call it a gag order really where VA—we know a lot of veterans go to the VA for their health care but when it comes to this they are stepping outside the system. They are still going to the VA for their health care because that is what is affordable for them.

So what can we do? If it is not the VA and getting rid of the prohibition, what else can be done to help get information to veterans so that they have the best shot at experiencing the positive medical benefits?

Mr. GOEPEL. I think, you know, only 6 million veterans use the VA for health care, so that leaves about 14 million veterans outside the VA. Outside VA care either with no care or private care. Or, you know, employer tied care. And this is an issue that I have seen in California where it is legal but there has been no real effort at the state level to educate consumers about what is now legal.

And the research that is being produced about cannabis and various cannabinoids, because we talk about cannabis as a plant but that plant holds 120-plus active components which all seem to have some sort of medical effect, and only a few are actually psychoactive or cause euphoria. So to essentially throw the entire plant out because there is a fear of THC making people, I do not know, relaxed or happy. I mean, this is the tension. Right? We are penalized and stigmatized for using something that we recognize to

be far less harmful, far more effective while being compelled in some cases to take psychoactive, heavily addictive, toxic medications. There is no known fatal dose of cannabis use. That cannot be said of any other drug veterans are regularly prescribed from nonsteroidal anti-inflammatory drugs, like ibuprofen, to gabapentin, to opioids, again, to benzodiazepines. You can name the sort of class of drugs that veterans get prescribed, and they all carry toxic and destructive side effects.

But with cannabis, veterans, and all Americans essentially need an education about what this plant is, and you do that by educating the doctors first because they are usually the gatekeepers of medical knowledge in our society.

So I will leave it at that. Thank you.

Mr. GOLDEN. Yep. Educate the doctors. You know, the situation I am talking about are those veterans in the VA system though who are choosing to use medical marijuana and then are going to their VA doctors and they are not disclosing, or if they are, being told that it is threatening their VA services and access to it. Right? So it is a huge problem and one that I think we ought to figure out.

Ms. Chaves, in Maine, I am only aware of one bank in the entire state, in a state that has now first allowed for medical use and now has decided through voter referendum to do a legalized sale as well on recreational use, only one bank willing to work with any business related with this as we move forward. I thought I might give you an opportunity to kind of talk about how that may have negative impacts on small businesses only having one bank to go to. What are some of the negative consequences for them?

Ms. CHAVES. The negative consequences for the bank is—

Mr. GOLDEN. I am more interested for the small businesses.

Ms. CHAVES. The small businesses, depending on the size of the bank, and I am sure it is fairly small so they cannot handle a lot of the businesses that are opposing up, the impact that it makes is that these businesses have to stand in line for bank accounts and if they are typically not doing as large a revenue they get pushed toward the bottom of the barrel or the end of the line. So their opportunity for banking is stretched out further away. And so they are unable to do business in a legal manner with banking.

Mr. GOLDEN. All right. Thank you for that. What you are describing is inadvertently it is almost encouraging somewhat predatory behavior because like you are saying, if you are not big enough for us to see the most value in it then we are not working with you. We are going to go work with like the bigger businesses; correct?

Ms. CHAVES. Definitely.

Mr. GOLDEN. Thank you.

Chairwoman VELAZQUEZ. The gentleman yields back.

Now we recognize the member from New York 19, Mr. Delgado, for 5 minutes.

Mr. DELGADO. Thank you, Chairwoman.

Thank each and every one of you for coming out and testifying before this Committee. I appreciate your perspective on this issue.

Ms. Chaves, there are a lot of dairy farmers in my district who are seeking additional sources of income in a difficult farm economy, as well as communities that are looking to attract new indus-

tries to help them revitalize. And New York has until its legislative session ends today to determine if it will legalize recreational use of marijuana. I actually think it may have actually happened in the last hour or two. But which could potentially in a way that is not legal. I am not sure at this point but, which could potentially have a huge economic benefit on the district if it were to be legalized.

However, even if the state does legalize cannabis, there will still be many hurdles at the Federal level for folks looking to enter the industry to overcome. What steps, and forgive me if this has been addressed already, but what steps can Congress take to make sure that new startups and existing small businesses can access this market and spur economic growth in rural communities like mine?

Ms. CHAVES. For starters, these small businesses need capital to even apply for their license. The licenses in each state, the fees are astronomical and they are getting more and more expensive. So it really knocks out the small business person for these licenses.

Second of all, if they get through the process of getting a license, they have no banking. They cannot operate as a normal business would act. They cannot pay their bills. They cannot get lease agreements for their property, their brick and mortar. They cannot operate as a normal business. This impacts the entire community, as well as the economy.

Mr. DELGADO. I have one follow up there.

I am also on the Agriculture Committee and I know that last year's Farm Bill removed hemp from the Controlled Substances Act, but the FDA still has strict regulations on hemp products. I have heard from folks back home about how this stringency creates a difficult and uncertain business environment. Which steps in your opinion should the FDA take to make it easier for dairy farmers to work in the hemp industry?

Ms. CHAVES. It is education and Congress also needs to understand that hemp is not an infused plant. There is no THC value, and therefore, should not be treated as a THC plant. Therefore, regulation should be different from cannabis making it easier for these companies or agriculture to enter the business.

Mr. DELGADO. All right. Thank you.

I yield back.

Chairwoman VELÁZQUEZ. The gentleman yields back.

The gentleman from Illinois, Mr. Schneider, is recognized for 5 minutes.

Mr. SCHNEIDER. Thank you, Madam Chairman. I want to thank the Chairwoman and the Ranking Member for having this hearing. I want to thank the witnesses for your testimony, for sharing your insights and experiences on what is an important issue.

As the others have, I am going to focus on you, Ms. Chaves. I apologize. I will try not to be redundant. But it has been talked about the challenges these small businesses are facing without the access to full banking services because of restrictions. I will not repeat the other questions but one of the thoughts I have is not just that it is hard to get started for the businesses that are there. It is hard for them to grow. And I would love for your thoughts on what you are seeing the constraints on growth.

Ms. CHAVES. The problems with them being able to grow is they need capital in order to do so. And without that capital or the

ability for us to lend them the capital to grow, they cannot expand, they cannot hire new employees, they cannot develop new products, and that really inhibits their entire growth and at times puts them out of business.

Mr. SCHNEIDER. Sure. One of the things I know from my experience working with entrepreneurs, entrepreneurs find a way of working around, and I am sure you have seen, as we have seen in Illinois, medical marijuana is not moving to recreational marijuana. These business people are going to find workarounds. What are some of the examples of workarounds you have seen in the marketplace?

Ms. CHAVES. They create pseudo companies, holding companies under different names and entities so as to mask their true industry, their true identity so that they can manage to get away and provide, obtain banking access. Unfortunately, banks are getting on to this and they do find out. And when they do find out, these accounts do get closed.

Mr. SCHNEIDER. Sure. And one of the other things I am hearing is a lot of these businesses are holding cash. It makes them a target and increases some of the risk to the businesses and the communities within which these businesses are operating. Are you seeing that at all as well?

Ms. CHAVES. Yes. And the problem with that is the banks that do decide to create a banking program, we are not able to accept the cash that they have held on to previously so that cash is no good. If we accept the cash from previous sales or previous months, we have to have a forensic accountant come in and validated all that cash. And that is very expensive and time consuming.

Mr. SCHNEIDER. Thank you.

I will just emphasize as more and more states are moving towards this and trying to create opportunities for businesses, I know the rest of you have talked about opportunities in minority businesses, other situations, the ability to have full access to capital, full access to banking services is crucial, and it is something that I hope we can address here in Congress and work with the states as well to allow these businesses to, as you said, Ms. Chaves, to grow, to create jobs, and to move the industry forward in a way that is constructive for all stakeholders.

So again, I want to thank the witnesses for being here today, and with that I will yield back.

Chairwoman VELAZQUEZ. The gentleman yields back. Thank you so very much.

I just have one question and then the Ranking Member, if you have any other comment or question.

Mr. Goepel, we heard statements and comments here like people want to get high or that the use of cannabis will lead as a gateway to other drugs or that it will encourage children and teens to use it. And I have read, and I was not high, that the National Institute on Drug Abuse had found that despite increasing legalization for adult use, it is not leading to corresponding increases in marijuana use for teens. Can you comment on that?

Mr. GOEPEL. Yes. The National Institute for Drug Abuse has long been looking for harms for cannabis. You know, the idea that we do not do research on cannabis is not true. We do plenty of re-

search, it is just looking for specific faults essentially. And those are the only studies that essentially can get funded by the Federal Government or get approval by the Federal Government. So for NIDA to release findings that undermine their position, I think it shows just how much or how wrong, excuse me, you know, Congress and the Federal Government has been in the way that they treat cannabis just as a plant. And specifically, the cannabinoids that the plant consists of.

For example, you know, the DEA has already rescheduled dronabinol, which was brought up, which is synthetic THC. But it is chemically identical to THC found in the plant. And they put that as a Schedule III drug, which while not a Schedule I, is still inappropriate because that category also contains drugs like ketamine and Vicodin, which I do not think anyone would argue that those drugs are comparable to THC. And the fact that CBD and the FDA sent a letter to the DEA asking for CBD to be put on Schedule V, which is the least restrictive schedule in the Controlled Substances Act because they found that it did not even really meet the requirements for scheduling.

So what we have in the cannabis plant is a lot of substances, a lot of compounds. We understand a couple of them. But what we have failed to understand, and largely because of the prohibition on research, is the way that all these compounds interact and influence each other. We understand that CBD, for example, can have an effect on reducing the psycho activity of THC. So if that is a concern, then there are ways to formulate a drug to avoid that terrible outcome of euphoria.

I guess the broader point here is that we cannot keep going around and around saying, well, these are the harms, these are some of the benefits, but we cannot actually do substantive research because prohibition exists and because of the scheduling of the whole plant on Schedule I.

Chairwoman VELAZQUEZ. Thank you.

Now I recognize the Ranking Member for 5 minutes.

Mr. CHABOT. Thank you. I will not use the whole 5 minutes, Madam Chair. I would just maybe sum it up on our side to some degree.

Chairwoman VELÁZQUEZ. Sure.

Mr. CHABOT. Mr. Hagedorn mentioned that he kind of grew up during the Just Say No Reagan era, and not as a child he grew up then but he was aware of what was going on at that time as well, and I was, too. I think I was on the Cincinnati City Council during that time. And we had a real problem with crack cocaine that was going on. That was one of the things that led to Just Say No. We had about 10,000 deaths a year due to drug overdoses at that time. Now the most recent year it was 70,000. So from 10,000 to 70,000 overdose drugs. It is not marijuana, obviously. We are talking opioids. But nonetheless, illegal drugs. So it seems somewhat ironic to me that we are having a hearing considering the uses and the effects on small business and in essence it is about legalization and that is kind of what this ultimately is leading to of marijuana. And at the same time when we have got this opioid crisis that has been epidemic that has killed so many Americans all across the country and we really have not got a complete handle. Yes, we

passed CARA. We passed the Support Act about a year ago. And so we have made some legislative progress, but the problem is still out there and people are still dying.

But at the Federal level, I mean, clearly all the stuff we have talked about here is inconsistent with Federal law right now. It is illegal if the law was enforced at the Federal level. And that is something that I think probably the Congress ought to take it up and make a decision to let people know what they can do is legal or not. Right now it is illegal at the Federal level and I am also on the Foreign Affairs Committee and the Judiciary Committee as well as being the Ranking Member of this Committee. But on the Judiciary Committee, I remember well asking the new attorney general at that time, Jeff Sessions, what was the administration's policy going to be relative to enforcing the Federal drug laws? Not because I was trying to influence him to go in one direction or another, but just to see what it was. And he indicated to me at that time that they had no plans at that time to do anything inconsistent or dramatically different than the previous administration, meaning the Obama administration, which was basically not to enforce the Federal laws.

So I would say in the near future there is probably no reason to think that that is going to change. I think we ought to clarify it one way or the other so the public is out there not breaking Federal law because it could be enforced some day and a lot of people are going to invest a lot of time and money into something which is right now illegal. And so we ought to clarify that. I think we owe that to the public. And I do not know which way the vote would go. I mean, I know the way I would probably vote. I think most of you would know from what I said today. I think it is not a good idea because I think the down sides of this outweigh the up sides. Maybe not from a financial perspective, especially from those that profit from it, but I have not been convinced that the benefits outweigh the dangers. But then I have been around a long time and it seems like the older generation more feel that way. The younger generation seem to be just the opposite. And a lot of things have changed in this country in recent years and that seems to be one of them. So, we will see where this all goes. And I almost did take the 5 minutes.

So I will give you one minute back. I yield back. You can wrap this up, Madam Chair.

Chairwoman VELAZQUEZ. The gentleman yields back. And definitely, as I stated at the beginning of this hearing, this is a complex and emerging industry, and Ranking Member, public sentiment is everything. Things that we thought we would not deal with 10 years ago, 20 years ago, public policies have changed because research and thought-based information help us craft legislation that will address the new discoveries and the new research.

So let me take this opportunity to thank all the witnesses for being here and testifying on this very important issue. My priority is to ensure that small businesses have a seat at the table and can be involved in this emerging industry. The fact and the reality is that the trend of legalization at the state level is not going to slow down, which will lead to more jobs in many sectors of our economy, and we need to see what role the federal government can play. We

have now heard about the opportunities and challenges for entrepreneurship and small business growth the legal cannabis industry presents for small firms. It is clear that this conversation is just beginning, and I am hopeful we can take a thoughtful approach to addressing the many aspects of legalized cannabis, particularly as it relates to protecting the interests of the small business owners operating in this space.

As I have done with other topics on this committee, I look forward to working with my colleagues on both sides of the aisle to find workable solutions to these problems.

I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

And if there is no further business to come before the committee, we are adjourned. Thank you.

[Whereupon, at 1:05 p.m., the Committee was adjourned.]

APPENDIX



"Unlocked Potential? Small Businesses in the Cannabis Industry"

Testimony before the Committee on Small Business

By

Shanita Penny, President, Minority Cannabis Business Association

Good afternoon Chairwoman Velazquez and members of the Committee on Small Business. Thank you for your leadership on the effort to provide the regulated cannabis industry with access to Small Business Administration ("SBA") services and the invitation to discuss unlocking the potential of small businesses in the cannabis industry.

I am Shanita Penny, president of The Minority Cannabis Business Association (MCBA) and Principal of Budding Solutions, a boutique cannabis business consulting firm based in Baltimore, MD. In addition to providing strategy consulting services to multi state operators and startups, I am a partner in two licensed cannabis businesses one in Pottsville, PA and the other in Oakland, CA.

As the President of MCBA, I lead an organization with the mission to create equal access to the cannabis industry as a way to create economic empowerment for our communities. Through policy advocacy, social programs, and outreach initiatives we seek to achieve equity for those communities most affected by marijuana prohibition.



MCBA works collaboratively with industry, community and policy makers to influence, create and support equitable cannabis policy; policy that addresses the needs and concerns of the communities devastated by the failed War on Drugs. Equitable cannabis policy encompasses restorative justice, community reinvestment and of course, economic empowerment which I will focus on today.

Equitable economic development and empowerment unlock the full potential of the local economy by dismantling barriers and expanding opportunities for low - income people and communities of color. Through accountable public action and investment, the cannabis industry will help grow quality jobs and increase entrepreneurship, ownership, and wealth.

Nearly 20% of respondents to a 2017 Marijuana Business Daily reader survey identified as minorities, and approximately 10% of those owners are black or Latino. This information was self-reported and highlights the need for an accurate baseline measurement to assess the actual current state of the industry and the impact that SBA access and banking will have on making the cannabis industry more accessible and equitable.

Legal cannabis presents significant business opportunities as the underground market transitions into a regulated business sector, but onerous capital requirements, restrictions on licensing for those with even minor previous drug related convictions and other factors have limited opportunities and success for minorities and other disadvantaged groups in the legal cannabis industry. The undeniable



effects of the drug war are hampering equity in the industry, but together, we can address and repair the harms caused by discriminatory enforcement of marijuana laws and ensure access to and diversity in the emerging legal cannabis industry.

The MCBA has published model policy that serves as a starting point or complement for equitable legislation. Our latest resource for policy makers, a Model Municipal Social Equity Ordinance (“Model Ordinance”) is intended to be used by municipalities that have adopted or are currently considering drafting ordinances to regulate, zone and license local cannabis businesses.

Our robust and participatory crafting process started with the basic framework of the RESPECT Resolution, introduced by Congresswoman Barbara Lee in 2018. In addition to adopting the RESPECT Resolution’s recitals and creating legislative language around the various best practices, we also borrowed liberally from social equity ordinances in development in Los Angeles, Oakland, San Francisco and Sacramento, attempting to improve upon these pioneering works with the benefit of hindsight. I have included a copy of our model ordinance in the appendix of my written testimony.

And while we have worked tirelessly to ensure that cannabis policy is equitable on every level, our efforts have been crippled by a lack of access to and support from agencies like the SBA. Lack of access to capital contributes to the widening ownership equity gap. State and municipal social equity and economic empowerment programs across the country are stalled because they are wasting precious resources,



time and money testing various solutions when the answer is literally right in front of me. Like all other small businesses, those wishing to start a state legal cannabis business should be able to access an agency that has since its founding, “delivered millions of loans, loan guarantees, contracts, counseling sessions and other forms of assistance to small businesses,” as it states in the SBA mission.

SBA provides vital tools to the development and support of minority businesses and communities. We believe access to SBA loans and services, with Congressional oversight, would help decrease the equity gap in the cannabis industry and keep cannabis revenues in the communities suffering the greatest economic and social harms of the War on Drugs (“affected communities”).

Application and licensing fees coupled with six-figure to multi-million-dollar start-up costs make starting and growing cannabis businesses challenging for most, but it is especially difficult for state and city equity licensees and without access to capital, they are vulnerable to predatory lending and business practices. These business owners need SBA support and resources to start and grow their businesses not business partners and investors that take advantage of equity programs to enter the market early or tokenize their "partners" for market share. It is an opportunity to build mutually beneficial partnerships between larger cannabis businesses and small businesses to the benefit of the community.



According to the Marijuana Policy Project, “adult-use marijuana business licensing fees vary widely, from as low as \$9/plant for small, outdoor grows in Maine to as high as \$120,000 for the most lucrative operations in California. Application fees also show a great deal of variation, ranging from the \$60 to \$5,000 range.” Medical cannabis dispensary application fees are nonrefundable and generally range from \$1,000 to \$5,000, with registration or annual fees typically between \$5,000 and \$20,000. Business owners in California pay a \$1000 application fee plus \$120,000 annually for the most lucrative operations and Pennsylvania requires a medical marijuana grower/processor license fee of \$200,000 with a \$10,000 annual renewal fee for all companies regardless of the size or value of the operation.

SBA access is also critical to business owners dealing with a newly, regulated, constantly evolving industry. As more mature state programs course correct and improve regulations, small businesses are often left scrambling to remain compliant when packaging or labeling regulations change, businesses must either find new sources of capital to cover the cost of the changes or face significant fines for violations.

However regulatory changes are not the only obstacles to state legal cannabis businesses. Uncontrollable factors, such as insect infestation, crop failure or a natural disaster like California growers experienced last year when wild fires ravaged the state and destroyed or damaged many cannabis gardens can often leave business owners with insurmountable debt, with no way of making up for lost revenue.



As Representative Earl Blumenauer, Chair of the Cannabis Caucus, said at MCBA's Lobby Day earlier this year, "There will be no comprehensive cannabis legalization bill that does not include strong equity components."

Even narrowly-tailored legislation like the SAFE Banking Act (H.R. 1595) or the small business legislation we are discussing today must address business and social hardships that disproportionately impact minority business-owners and our communities. Recent amendments to the SAFE Banking Act will help demonstrate the need for equitable access to capital and financial services. Rep. Perlmutter's amendment added during markup created a requirement that federal regulators collect data and provide an annual report to Congress on the availability of access to financial services for minority-owned cannabis business and that the Government Accountability Office ("GAO") carry out a study on the barriers to market place entry for minority-owned cannabis businesses.

MCBA's suggestions to help ensure that SBA products and services are equitably accessible to affected communities are as follows:

1. Data collection requirements and reporting requirements

MCBA suggests that Congress require SBA to (a) collect data on the availability and provision of SBA products and services to minority-owned cannabis businesses and (b) issue an annual report containing the data or information to Congress, including any related regulatory or legislative recommendations. Additionally, we suggest that Congress require SBA to collect and report data on the denial of loan and 8(a)



program applications on the sole basis of a prior cannabis conviction that would not preclude participation in a state cannabis program.

Such safeguards would provide congressional oversight to help ensure equitable access to SBA services and products including 7(a) and 804 loans, and Community Advantage (“CA”) loans and access to CA lenders in affected communities. As I previously mentioned, similar safeguards were recently included in the amended language of the SAFE Banking Act of 2019 with broad bipartisan support.

Further, we ask that Congress require SBA to consider the data in granting lenders conditional loan guarantees and in determining eligibility for certified and preferred lender programs.

2. Study requirements

We suggest that Congress direct the Government Accountability Office (“GAO”) to conduct a study on the barriers to marketplace entry, including access to SBA financial services for potential and existing minority-owned cannabis businesses, and issue a report to Congress that includes any related regulatory or legislative recommendations.

This safeguard would help ensure that Congress has sufficient oversight to ensure equitable access to SBA services and products. This suggestion also echoes language found in the current draft of the SAFE Banking Act of 2019.



3. Past cannabis convictions should not preclude participation in the 8(a) business development program

Additionally, MCBA suggests that Congress require that SBA not preclude participation in the 8(a) business development program, or the granting of a federal contract, for *cannabis-related* business based solely on prior cannabis convictions that do not preclude participation in state legal cannabis programs¹.

With the likely expansion of government cannabis research and the rapid growth of ancillary cannabis businesses with valuable experience and expertise, government contracts with cannabis businesses will become a reality in the near future. As such, we ask that Congress prevent SBA from deeming 8(a) applicants as lacking requisite “good character” due solely to a prior cannabis conviction that would not preclude participation in a state legal cannabis business².

4. Ensure adequate access to Community Advantage lenders

Last, we suggest that SBA lift the moratorium on new Community Advantage (“CA”) lenders to ensure sufficient lenders to provide equitable access to CA loans in affected communities.

In 2018, SBA extended the pilot CA lender program with significant changes that may impact minority access to the limited pool of CA lenders. Among the changes, SBA implemented a moratorium on new

¹ See California Business & Professions Code, Division 10, Chapter 5, Section 26057. See also California Code of Regulations Title 17, Division 1, Chapter 13, Sections 40130, 40159, 40162, and 40165.

² See above.



lenders, while expanding the definition of “underserved markets” to include “opportunity zones” and rural areas. SBA cited the high-risk of such loans and the “sufficient number of geographically dispersed CA lenders” as the reasons for the changes. However, these and other changes will further limit access to these loans defeating the purpose of the program— to increase access to credit in underserved areas, including affected communities.

I am here representing business owners and advocates throughout the country and extend the MCBA network and all of our resources to the committee as you consider this issue. Thank you again for the opportunity to testify today, I look forward to working with you to create equitable cannabis policy that addresses the needs and concerns of often forgotten stakeholders -- small businesses and the communities devastated by the failed War on Drugs.



APPENDIX



“NuLeaf Project has seen first-hand the impact capital can have on minority-owned cannabis businesses. Thus far, we have made grants of \$30,000 into licensed cannabis businesses owned by African Americans, the entrepreneur group that, as reported by U.S. Department of Commerce, Minority Business Development Agency, as well as many other sources, has the least access to funding of any other racial or ethnic group. The returns we've seen with NuLeaf Project's investments into these businesses are on track to exceed 200% within the first year. Investments in diverse owned-businesses have been shown to net returns that are greater than investments in white-male owned businesses according to a 2015 McKinsey study. The track record of success for minority entrepreneurs combined with the explosively growing cannabis industry leaves little doubt that investments in minority-owned licensed cannabis businesses is fertile ground for growing entrepreneurial success, adding jobs to the economy, and improving household income for people of color.” – **Jeannette Horton, Co-founder and Executive Director, NuLeaf Project, Portland, Oregon**



**Minority Cannabis Business Association
Model Municipal Social Equity Ordinance
March 6, 2019**

PREFACE

*This Model Municipal Social Equity Ordinance (“**Model Ordinance**”) is intended to be used by municipalities that have adopted ordinances to regulate, zone and license local cannabis businesses, or are currently considering draft ordinances to do so. As such, this Model Ordinance does not include recommended provisions for general license types (other than to add license types that lower barriers to entry or mitigate on-going criminalization of cannabis consumption), nor does it include detailed zoning and land use provisions. The drafters of this model ordinance assume those provisions are already incorporated within the adopting municipality’s general licensing ordinance, and that the general licensing ordinance already reflects the particular circumstances of its local community.*

We also assumed that the types of licenses which may be available, and the general regulatory framework surrounding cannabis businesses will be largely predetermined by the state in which the adopting local jurisdiction sits. As such, the Model Ordinance contains only those provisions necessary to create a baseline framework for adopting and advancing social equity in the cannabis industry as official public policy -- a “minimum viable product” designed to be broadly adopted and tailored as necessary by each adopting jurisdiction. Prevailing political realities in each jurisdiction will vary, and the Model Ordinance includes bolded and bracketed substantive terms that may be revised as necessary--either to achieve passage of minimum framework and/or create a more robust framework than the baseline presented herein. (Note that certain placeholder terms have also been bracketed where input from the specific local jurisdiction adopting the model ordinance is required--e.g., “[CITY/COUNTY]”, “[INSERT DATE HERE]”, etc.)

It is important to note that the MCBA Model Municipal Social Equity Ordinance Drafting Committee (“Drafting Committee,” identified in the footer) started with the basic framework of the RESPECT Resolution, House Resolution 943 introduced by

MCBA Model Municipal Social Equity Ordinance Drafting Committee: Khurshid Khoja, MCBA Policy Committee Co-chair, Principal, Greenbridge Corporate Counsel, NCIA Board Vice Chair; **Chloe Grossman**, MCBA Policy Committee, NCIA Policy Council, Alchemist Holdings Inc.; **Jesse Stout**, Greenbridge Corporate Counsel; **Rodney Holcombe**, Drug Policy Alliance

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Congresswoman Barbara Lee in 2018, adopting its recitals and creating legislative language around the various best practices recommended by the RESPECT Resolution. We also borrowed liberally from social equity ordinances in development in Los Angeles, Oakland, San Francisco and Sacramento, attempting to improve upon these pioneering works with the benefit of hindsight.

The Drafting Committee finalized this version of the Model Ordinance after incorporating input received on two previous working drafts. The First Discussion Draft was previously circulated in October 2018 and presented to the attendees of the MCBA Policy Summit, as well as the members of the MCBA Policy Committee and the MCBA Board of Directors. Their input was incorporated by the Drafting Committee into the Second Discussion Draft. The Second Discussion Draft was circulated for input to the MCBA Board of Directors, the NCIA Policy Council staff, Drug Policy Alliance staff as well as other select stakeholders for additional input before being finalized.

Finally, please note that this Model Ordinance is intended to be a living documents, and one that can be continually improved upon. The Drafting Committee invites any and all input on the Model Ordinance, and expects to publish updated versions of the Model Ordinance periodically.

EXECUTIVE SUMMARY

Section 1: Short Title

Section 2: Cannabis Social Equity Program

- This ordinance defines Equity Program eligibility based on several demographic factors. "Low Income" means below 80% AML. "Member of an Impacted Family" means arrested or convicted for a cannabis charge. "Resident of a Disproportionately Impacted Area" means someone who lived in an area with disproportionately high cannabis arrests.
- The diversely-representative Cannabis Social Equity Commission will provide ongoing advice to the local government about implementation of the Municipal Social Equity Ordinance and administration of the Cannabis Social Equity Fund.
- The Cannabis Social Equity Fund will financially support Social Equity Program participants through workforce development, Start up costs, consulting services and technical assistance.
- The Social Equity Study will identify "Disproportionately Impacted Areas", areas with high cannabis arrest rates used for the ordinance's equity eligibility criteria.
- Individuals may qualify for one of three tiers of the Social Equity Program. Tier 1 and 2 participants must own a percentage of a cannabis business and

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demonstrate a need to participate. They receive waived licensing fees, access to loans/grants, technical assistance, etc. Tier 3 participants must incubate or fund Tier 1 or 2 participants. All participants receive priority licensing.

- Tier 1 and 2 participants will also have access to low-interest (or no-interest) loans for operating capital, Social Equity Fund grants, incubation opportunities from Tier 3 participants, and fee waivers.
- Tier 1, Tier 2, and Tier 3 participants will have their applications reviewed in order of their tier, with General Applicants (non-Equity Program) last. The local government will review applicants' business documents on an ongoing basis to confirm their continuing eligibility.

Section 3: Good Faith Effort for Equity in Employment

- Licensees are required to use good-faith efforts in hiring employees who meet the equity eligibility criteria, and certify annually that 25% of their employees meet the criteria or they have used good-faith efforts.

Section 4: Community Benefits Agreement

- The local government may add requirements that applicants enter Community Benefit Agreements, which may or may not apply to equity applicants as well. Neighborhood councils may request non-monetary contributions from applicants, and/or funds up to 3% of net profits.

Section 5: Community Reinvestment Fund

- A percentage of tax and non-licensing fee revenue shall support a Community Reinvestment Fund to, at a minimum, provide reentry services, job training, and record-change assistance to residents of Disproportionately Impacted Areas.

Section 6: Record Change Provisions

- The local government will fund or otherwise facilitate resentencing and expungement to restore the civil rights of prior cannabis arrestees. This can include automation, fee waivers, and funding legal fairs and lawyers to publicize and execute these changes.

Section 7: No Additional Restrictions Allowed on Entry Into the Cannabis Industry

- Local governments cannot discriminate based on applicants' substance use treatment history, or convictions unrelated to honesty, and background checks can only be used to check for these convictions.

Section 8: Data Collection

- To inform future equity plans, the regulating agency will collect and publish demographic data on licensure applicants and licensees, persons cited, arrested, or convicted for marijuana law violations, and on the cannabis workforce.

Section 9: Lowest Law Enforcement Priority

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- The local police will de-prioritize cannabis investigations and arrests. Possession or smell of cannabis will no longer constitute probable cause for investigation or arrest.

Section 10: Permitting Social Consumption Lounges

- Local governments can regulate consumption lounges where cannabis may be used on-site, but no more restrictively than state law regulates them.

Section 11: Eliminating Suspicionless Drug Testing

- Employers cannot drug-test workers, who are not in safety-sensitive jobs, without reasonable documented cause; random drug-testing is prohibited.

The text of the model ordinance begins on the next page.

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Whereas the communities that have been most harmed by cannabis prohibition are benefiting the least from the legal marijuana marketplace;

Whereas a legacy of racial and ethnic injustices, compounded by the disproportionate collateral consequences of 80 years of cannabis prohibition enforcement, now limits participation in the industry;

Whereas 31 States and the District of Columbia have adopted laws allowing legal access to medicinal cannabis, and 9 States and the District of Columbia have adopted laws legalizing cannabis for adult use;

Whereas legal cannabis sales totaled \$8.5 billion in 2017 and are projected to surpass \$50 billion by 2026;

Whereas according to the American Civil Liberties Union (ACLU), enforcing cannabis prohibition laws costs taxpayers about \$3.6 billion a year;

Whereas the continued enforcement of cannabis prohibition laws results in over 600,000 arrests annually, disproportionately impacting people of color who are almost 4 times more likely to be arrested for cannabis possession than their White counterparts, despite equal rates of use across populations;

Whereas people of color have been historically targeted by discriminatory sentencing practices resulting in Black men receiving drug sentences that are 13.1 percent longer than sentences imposed for White men and Latinos being nearly 6.5 times more likely to receive a Federal sentence for cannabis possession than non-Hispanic Whites;

Whereas, in 2013, simple cannabis possession was the fourth most common cause of deportation for any violation and the most common cause of deportation for drug law violations;

Whereas it is estimated that less than 1 percent of the cannabis industry is owned or operated by people of color;

Whereas applicants for cannabis licenses are limited by numerous laws, regulations, and exorbitant permit applications and licensing fees in these States, which can total more than \$700,000;

Whereas historically disproportionate arrest and conviction rates make it particularly difficult for people of color to enter the legal cannabis marketplace, as most States bar these individuals from participating;

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Whereas individuals with cannabis and other convictions types are burdened with collateral consequences that make seeking employment, receiving public benefits, obtaining occupational licenses, and pursuing higher education more difficult;

Whereas individuals with prior convictions are often unaware that remedies exist under state law to expunge cannabis and non-cannabis convictions;

Whereas expunging prior convictions for activity that is now legal or that has been reduced in severity is often too costly for individuals and communities most harmed by the drug war and cannabis prohibition;

Whereas tax revenue generated from the adult-use sales of cannabis could be used to reinvest in communities most harmed by cannabis prohibition, including efforts to create access to capital, job training programs, and with seeking assistance to expunge criminal convictions;

Whereas Federal law severely limits access to loans and capital for cannabis businesses, disproportionately impacting minority small business owners; and

Whereas some States and municipalities have taken proactive steps to mitigate inequalities in the legal cannabis marketplace and ensure equal participation in the industry.

NOW, THEREFORE, THE PEOPLE OF THE [CITY] [AND] [COUNTY] OF _____, [STATE] DO ENACT AS FOLLOWS:

SECTION 1: SHORT TITLE

This ordinance shall be known and may be cited as the [ENTER MUNICIPALITY NAME] Cannabis Social Equity Act of 20[___] (hereinafter, this "Act").

SECTION 2: CANNABIS SOCIAL EQUITY PROGRAM

A. In addition to the definitions in [INSERT CITATION TO GENERAL MUNICIPAL CANNABIS LICENSING ORDINANCE] (the "Local Licensing Ordinance"), the following definitions apply within this Act:

1. "Dependent" has the same meaning ascribed to it by the Internal Revenue Service for individual income tax purposes and is determined by satisfaction of either the qualifying child tests or qualifying relative tests described in the most current version of the annual IRS Tax Guide for Individuals.

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2. "Low Income" means an individual who currently (at the time of licensing) lives in a household with household income that is less than eighty percent (80%) of the current fiscal year median family income for the county of residence, as determined by the United States Department of Housing and Urban Development or its successor agency.^{1 2}
3. "Member of an Impacted Family" means an individual who, in the previous tax year, had a parent, legal guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to [EFFECTIVE DATE OF LEGALIZATION MEASURE], was arrested for, convicted of, or adjudged to be a ward of the juvenile court for any non-violent crime under the laws of [STATE] or any other jurisdiction relating to the sale, possession, use, cultivation, manufacture, or transport of cannabis.³
4. "Prior Controlled Substance Record" means to have been arrested for, convicted of, or adjudged to be a ward of the juvenile court for any crime under the laws of [INSERT STATE] or any other jurisdiction relating to the sale, possession, use, cultivation, manufacture, or transport of a controlled substance prior to [EFFECTIVE DATE OF LEGALIZATION].
5. "Resident of a Disproportionately Impacted Area"⁴ means an individual who, prior to [EFFECTIVE DATE OF LEGALIZATION MEASURE], lived for a minimum of [2-10] consecutive or non-consecutive year(s) between 1970 to the effective date of legalization in a geographic area or areas that experienced a disproportionately high number of cannabis arrests relative to population, during the individual's residency in such geographic area, as determined by the Social Equity Study.^{5 6}

¹ A locality should provide the link to HUD's annual median family income figures as soon as reasonably practicable following annual publication. See here: <https://www.huduser.gov/portal/datasets/il.html>

² Some states annually produce alternative low income figures that are adjusted based on factors deemed relevant by the state, such as cost of living, housing costs, and state income tax deductions. Where available, annually published state low income figures that are based on median family income but are further adjusted should be employed in the definition of low income instead of HUD's median family income figures.

³ Localities may consider expanding to include family members with any arrest or conviction for any non-violent and/or controlled substance crime.

⁴ Localities should adjust this requirement and consider restricting it to a specific time period based on periods of highest arrests, housing displacement or gentrification, or any other factors deemed relevant.

⁵ We strongly recommend a data-driven approach to identifying disproportionately impacted areas, so this criterion was purposefully left vague. It should be further specified following the release of findings from a Social Equity Study commissioned by the adopting jurisdiction. The City of Boston, the City of Sacramento, the City of Los Angeles, the City and County of San Francisco, and other prominent social equity jurisdictions have commissioned similar reports that can be used as a guideline for determining scope. Please note that the common approach to defining disproportionately impacted areas is to look at standard deviations in cannabis arrest rates across different geographic units, however the geographic units for which police arrest data is available will vary across localities and will substantially impact how disproportionately impacted areas are defined. Each locality will need to consider different ways to

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6. "Resident of an Impoverished Area" means an individual who maintained a primary residence in census tracts where at least **[X]**% of the households had incomes at or below the federal poverty level during the individual's residency in such census tract, and who did so for a minimum of **[Y]** consecutive or **[Z]** non-consecutive years.
- B. The [CITY/COUNTY] shall establish a Cannabis Social Equity Commission ("Commission") to advise the [CITY/COUNTY] on the ongoing implementation of this Act and the administration of the Cannabis Social Equity Fund. The Commission shall include individuals with **[Prior Cannabis Records, individuals from Disproportionately Impacted Areas, members of impacted communities, and social justice advocates]**.
- C. The [CITY/COUNTY] shall establish a Cannabis Social Equity Fund (the "Fund"), which shall consist of monies appropriated or donated for the purpose of supporting the Cannabis Social Equity Program and eligible Program participants. The Fund monies may be used for any purpose directly related to the Program and approved by the Commission. Without limitation, Fund monies may be used to:
1. Provide financial support for Social Equity Program participants, including low- or no-interest loans or small grants for participants' start-up costs;
 2. Offset local cannabis tax and fee revenue losses associated with offering tax and fee relief for Social Equity Program participants; and
 3. Support programs and services that benefit and contribute to the operational success of Social Equity Program participants, such as programs and services that offer:
 - i. Workforce development;
 - ii. Access to affordable commercial real estate;
 - iii. Access to investment and financing;
 - iv. Access to legal and consulting services;
 - v. Assistance with licensing and regulatory compliance;
 - vi. Technical training related to cannabis operations; and

conceptualize disproportionately impacted areas and figure out which is most effective in helping the locality achieve the stated goals of its Social Equity Program.

⁶ Other conditionally applicable criteria for localities to consider:

Experienced housing instability - Consider in jurisdictions with substantial housing shortage or other relevant housing market conditions. Sample Language: "Since 1995, experienced housing insecurity in San Francisco, as evidenced by eviction, foreclosure, or revocation of housing subsidy" (SF Police Code ("SFPC") § 1604(b)(4)(C))

Attended public school for some minimum amount of time - Consider in jurisdictions where there is substantial income differentiation between public and private school attendees. Sample Language: "Attended a school under the jurisdiction of the San Francisco Unified School District for five years, either consecutively or in total, during the period 1971-2016" (SFPC § 1604(b)(4)(E))

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- vii. Pre-qualification and matching of Incubators and Incubatees.
- D. The [CITY/COUNTY] shall commission a Social Equity Study to identify Disproportionately Impacted Areas⁷ and utilize the data collected pursuant to Section 8, "Data Collection", of this Act to further the purposes of this act.
- E. A Social Equity Program participant shall be eligible for one of three tiers.
 - 1. To qualify for Social Equity Program Tier 1, **[at least 51%]** of the applicant's business must be owned **[and]**⁸ **[controlled/operated]** by one or more individuals **[who will hold such interest for at least X years after the applicant's license is granted (the "Qualifying Period")]**⁹ and who meet one of the following criteria:
 - i. Have a Prior Controlled Substance Conviction and be at least one of the following:
 - 1. Low Income.
 - 2. Member of an Impacted Family.
 - 3. Resident of an Impoverished Area.
 - 4. A Former Resident of a Disproportionately Impacted Area; or
 - ii. A former Resident of a Disproportionately Impacted Area and currently at least two of the following:
 - 1. Low Income.
 - 2. Member of an Impacted Family.
 - 3. Resident of an Impoverished Area.

Such individuals are hereinafter referred to as "Qualifying Individuals".
 - 2. To qualify for Social Equity Program Tier 2, **[a minimum of 33.3%]**¹⁰ of the applicant's business must be owned **[and]**¹¹ **[controlled/operated]**¹²

⁷ We strongly advocate for a data-driven approach to determining which communities have been disproportionately impacted and therefore should be targeted for program eligibility and other benefits. However, we recognize that commissioning a Social Equity Study is expensive and may not be feasible for all localities. A less expensive alternative may be to conduct internal analysis of cannabis arrest data to determine a simple standard (e.g., 1.5+ standard deviations above the mean cannabis arrest rate for the City) for identifying "disproportionately impacted" communities.

⁸ "And/Or" may be an appropriate language choice if the adopting jurisdiction will allow non-profit organizations to be eligible for Tier 1 or Tier 2 status, since non-profit corporations are non-stock entities that cannot legally have any owners.

⁹ In order to prevent applicants from gaming the program, we recommend adding a "Qualifying Period" during which the ownership interest of Qualifying Individuals may not be diluted or divested.

¹⁰ It should be noted again that bracketed terms may be adjusted by the adopting jurisdiction. We recommend a floor of no less than 33%, but adopting jurisdictions may consider a higher floor of at least 51%.

¹¹ "And/Or" may be an appropriate language choice if the adopting jurisdiction will allow non-profit organizations to be eligible for Tier 1 or Tier 2 status, since non-profit corporations are non-stock entities that cannot legally have any owners.

¹² Where, as in Tier 2, the eligible individuals hold less than a majority of the applicant's equity, voting "control" is not mathematically possible; in this instance, the term "operated" may be a better choice than controlled.

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by one or more Qualifying Individuals **[who will hold such interest for the Qualifying Period], and must meet the criteria listed above.**

3. Applicants for Social Equity Program Tiers 1 and 2 may not submit licensing applications to operate more than one license per category of commercial cannabis activity (e.g., cultivation, manufacturing retail) in the [CITY/COUNTY].
4. A Tier 3 Social Equity Program licensee shall enter into an Incubation Agreement with a Tier 1 or Tier 2 Social Equity Program participant (an "Incubated Licensee") to provide rent-free space owned or leased by the Tier 3 licensee, with prorated utilities, and compliant security equipment and services ("Incubation Space") for the Incubated Licensee's commercial cannabis business operations for a period of **[X]** years.
 - i. The Tier 3 licensee shall provide Incubation Space that meets all of the following conditions:
 1. The Incubated Licensee can conduct commercial cannabis activities authorized by its license type in the Incubation Space without violating any land use or sensitive use requirements in [INSERT CITATION TO GENERAL MUNICIPAL LICENSING ORDINANCE].
 2. The Incubated Licensee will not incur costs for bringing mechanical, electrical, plumbing, and fire and life safety systems into compliance with [CITY/COUNTY] and State regulations;
 3. The Incubated Licensee has the legal right to occupy and use the Incubation Space for the commercial cannabis activities authorized by its license type.
 - ii. The [CITY/COUNTY] may, at its discretion, approve a fee to be paid by the Tier 3 licensee to one or more Tier 1 and Tier 2 licensees in lieu of Incubation Space. At minimum, the fee shall be equivalent to **[two times]**¹³ the highest cost per square foot for a) commercial, b) industrial, or c) manufacturing space within the City adjusted annually based on the US Commercial Real Estate Index ("CREI") multiplied by the required amount of space for incubation multiplied by the required incubation term.

¹³ The intent here is to make the in-lieu fee a more expensive option so that incubation remains an attractive option. The multiplier can be adjusted as appropriate based on real estate pricing in the city or county. For example, if real estate pricing varies greatly across different areas of a city or county, a city- or county-wide multiplier may need to be removed, adjusted down, or broken out by smaller geographic units.

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- iii. The Incubation Agreement shall include reasonable covenants obligating Tier 3 licensees to negotiate in good faith over preferred business relationships with its Incubated Licensee immediately upon the successful licensure of both businesses.¹⁴
- iv. The Incubation Agreement shall include reasonable covenants negotiated in good faith obligating Tier 3 licensees not to compete directly with the Incubated Licensee for the term of the Incubation Agreement, to the extent permissible under applicable state and federal competition laws.
- 5. Additionally, a Tier 3 license shall prepare a staffing plan that demonstrates intent, and methods, to comply with Section 3 of this Act [GOOD-FAITH EFFORTS FOR EQUITY IN EMPLOYMENT], including:
 - i. organizational chart, demonstrating the roles and responsibilities of each employee and the reporting structure, and
 - ii. description of applicant's employment outreach and recruitment strategies, including providing employment opportunities to persons who have been disproportionately impacted by the criminalization of Cannabis.
- 6. The [CITY/COUNTY] shall issue guidance on acceptable forms of evidence of Tier 1, Tier 2, and Tier 3 Social Equity Program eligibility.
- F. Tier 1, Tier 2, **[and Tier 3]** participants in the Social Equity Program shall be eligible to receive the following benefits:
 - 1. Priority processing of license applications.
 - 2. Expedited annual license renewal processing.
 - 3. **[Waived application and initial licensing fees.]**¹⁵
 - 4. Tier 1 and Tier 2 Social Equity Program licensees shall also be eligible for **[one or more of the following]**:
 - i. Low-interest or no-interest business loans awarded by the [CITY/COUNTY] or the [CITY/COUNTY]'s designee.^{16 17}

¹⁴ For the sake of example, a Tier 3 licensee with a distribution facility which incubates a manufacturer may enter into a long term contract for the distribution of the incubated licensee's products for the term of the Incubation Agreement.

¹⁵ If waiving application and first annual licensing fees for all Social Equity Program participants is not feasible for a given jurisdiction, the local cannabis regulatory authority may consider offering at least a 50% reduction in application and first annual licensing fees for Social Equity Program participants as an alternative. Additionally, a jurisdiction may consider requiring a Tier 3 licensee to cover the cost of application and first annual licensing fees for Tier 1 and Tier 2 licensees.

¹⁶ Potential funding sources for low-interest or no-interest loans to consider: cannabis tax revenue, although taxation is typically limited in medical cannabis markets; existing local funds used to support local government programs for economic development, diversity, or other related subjects; fees collected from a subset of cannabis licensees, such as cannabis licensees who do not participate in the Social Equity Program.

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- ii. Municipal grants for start-up costs, funded by the Cannabis Social Equity Fund.
 - iii. Opportunities for incubation by a Tier 3 Social Equity Program licensee.
 - iv. Access to [CITY/COUNTY] events and information intended to facilitate introductions between licensees and potential investors and/or incubators.
 - v. Business, licensing, inspection, and building and land use permitting requirements, and operational compliance assistance and training provided by the [CITY/COUNTY] or the [CITY/COUNTY]'s designee.¹⁸
 - vi. Waived or reduced [CITY/COUNTY] fees related to securing cannabis-related local land use entitlements and permits, building permits and inspections.
 - vii. Subject to [neighborhood]¹⁹ approval, an exemption from "buffer zones" under [INSERT CITATION TO SPECIFIC ORDINANCE PROVISION] of the Local Licensing Ordinance mandating distance between premises.
 - viii. **Waived or reduced annual license renewal fees, as follows:**
 - 1. **75% reduction in first annual license renewal fees;**
 - 2. **50% reduction in second annual license renewal fees;**
 - 3. **25% reduction in third annual license renewal fees;**
 - 4. **Additional fee reduction at the Department's discretion on the basis of demonstrated financial need.²⁰**
- G. The [CITY/COUNTY] shall review and process applications for cannabis business licenses in the following order:
- 1. First priority: Tier 1 Program applicants.
 - 2. Second priority: Tier 2 Program applicants.

¹⁷ Eligibility standards must be established for the low-interest or no-interest loan program. Localities may wish to consider, but need not feel limited to, the following factors: "operations ready" status, demonstrated financial need, or other factors deemed relevant by an established local sub-unit with community-level decision-making authority and an in-depth understanding of the community's needs (e.g., Neighborhood Council, Economic Development Council).

¹⁸ In this case, the Department's designee may be another local government body that is better suited to perform this role or a third-party contractor with the necessary skills and expertise to provide excellent service to Social Equity Program participants.

¹⁹ The reference to "neighborhood" could be revised to refer to a city ward, supervisorial district or other political subset of the adopting jurisdiction.

²⁰ Alternatively, a locality may consider fee deferral until a Social Equity Program licensee is profitable and can afford assessed fees.

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3. Third priority: Tier 3 Program applicants that will provide Incubation Space to Tier 1 Program applicants.
 4. Fourth priority: Tier 3 Program applicants that will provide Incubation Space to Tier 2 Incubatees.
 5. Fifth priority: Tier 3 Program applicants that will provide a Department-approved fee in lieu of Incubation Space.
 6. Sixth priority: General applicants who enter an agreement with the City to contribute funds to Social Equity Commission initiatives including, without limitation, community reinvestment and the Social Equity Program. Prioritization within this category shall be based on annual contributions.
 7. Seventh priority: All other general applicants.
- H. The [CITY/COUNTY] shall verify the eligibility of all Tier 1 and Tier 2 applicants.
1. Applicants will be required to disclose all business formation documents for their businesses, as well as any resolutions or consents of the board of directors or managers, any shareholder or LLC member consents and agreements (including but not limited to voting agreements), and any material agreements (including, but not limited to, service, licensing and royalty agreements, and real estate leases and agreements) which distributes the business' revenues and/or profits to any other party.
 2. The disclosure requirement in subsection 1 above will be a continuing obligation for all Tier 1 and Tier 2 licensees, which shall make their corporate records open to inspection by the [CITY/COUNTY] upon reasonable notice.
 3. The ownership interests held by Qualifying Individuals in a Tier 1 or Tier 2 business may not be diluted through additional capital contributions into the business during the Qualifying Period.
 4. The ownership interests of Qualifying Individuals may not be transferred or sold during the Qualifying Period; provided, however, the Qualifying Individuals in a single business may transfer their ownership interests among each other at any time with prior written notice to the [CITY/COUNTY].
 5. Qualifying Individuals may only be divested of their ownership interest in a Tier 1 or Tier 2 business for acts or omissions which would otherwise result in the loss of a state or local cannabis business license if the Qualifying Individual is not divested.

SECTION 3: GOOD-FAITH EFFORT FOR EQUITY IN EMPLOYMENT

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- A. **[Each licensee, including Tier 1 and Tier 2 licensees][Each Tier 3 licensee]** shall undertake good-faith efforts to ensure that at least 25% of the Licensee's employees must be individuals who:
1. Has a Prior Controlled Substance Conviction;
 2. Is Low Income;
 3. Is a Member of an Impacted Family;
 4. Is a Resident of an Impoverished Area; or
 5. Is a former Resident of a Disproportionately Impacted Area.
- B. Annually, **[each licensee, including Tier 1 and Tier 2 licensees][each Tier 3 licensee]** shall send to [CITY/COUNTY] a certification, stating either:
1. that at least 25% of the Licensee's employees meet one of the five criteria above, or
 2. (a) that the Licensee has hired such employees to the extent feasible, and describing the Licensee's employment outreach and recruitment strategies, including providing employment opportunities to persons meet one of the five criteria above and (b) that the Licensee transmitted all job openings, to [CITY/COUNTY] agency responsible for workforce development, for public posting.

Some participants wanted to see Tier 3 businesses mandated to do business with their incubatees (such as a retail storefront incubator providing its delivery service incubatee the exclusive contract to deliver for the storefront for a period of years), or at least not to set-up a business that competes with the incubatee for a period of years.

SECTION 4: COMMUNITY BENEFITS AGREEMENT

- A. The [CITY/COUNTY] may, at its discretion, adopt an ordinance that requires applicants to enter into a community benefits agreement with the [CITY/COUNTY] as a condition of license issuance. The general scope of the community benefits agreement and the procedures for administration shall be established by ordinance.
- B. Except as otherwise specified, contributions made pursuant to a community benefits agreement may be monetary, non-monetary, or both.
- C. At least once annually, the [CITY/COUNTY] shall request that each disproportionately impacted area [INSERT EQUIVALENT OF COMMUNITY PLAN AREA/NEIGHBORHOOD COUNCIL] and residents adversely impacted by a prior arrest or other criminal justice system involvement prepare a list of community needs.

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- D. Non-monetary contributions shall be responsive to the needs of one or more disproportionately impacted areas.
- E. Monetary contributions shall support programs, initiatives, and organizations that address the needs of one or more disproportionately impacted areas.
- F. Procedures for collection and distribution of community benefits funds shall be established by ordinance.
- G. The [CITY/COUNTY] may exempt Social Equity Program participants from any mandate to enter a community benefits agreement with the [CITY/COUNTY] or any mandatory monetary contribution related to a community benefits agreement for up to three years.
- H. The [CITY/COUNTY] shall not enter a community benefits agreement that requires a General Applicant or General Licensee to contribute funds in excess of three percent (3%) of projected or actual annual net profits or the dollar equivalent thereof.
- I. The [CITY/COUNTY] shall not enter a community benefits agreement that requires a Social Equity Program participant to contribute funds in excess of one percent (1%) of projected or actual annual net profits or the dollar equivalent thereof.
 - a. As used in this section, "net profits" means (i) the total amount actually received or receivable from all sales, and the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise minus (ii) any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.²¹
- J. A Social Equity Program participant may submit a request to the [CITY/COUNTY] for reduction or deferral of contributions required by community benefits agreement on the basis of financial hardship.
- K. Within fourteen (14) calendar days of the date the request is received by the [CITY/COUNTY], the [CITY/COUNTY] shall approve or deny the request in writing.
- L. If the [CITY/COUNTY] fails to approve or deny the request within fourteen (14) days of receipt, the request is deemed approved.

²¹ This definition may be revised and tailored by the adopting jurisdiction to account for microbusinesses and other vertically-integrated businesses that have intra-company sales.

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- M. The [CITY/COUNTY] shall not impose any requirements in a community benefits agreement or in relation to such agreement that would be unreasonable, impractical, or contrary to the public interest for the licensee to comply with.
- N. The [CITY/COUNTY] shall prepare an annual report on community benefits agreements for the Cannabis Social Equity Commission. The report shall include, without limitation, a description of the conditions that trigger a community benefits agreement, the total number of active community benefits agreements, the number of new community benefits agreements, the number of retired community benefits agreements, a list of participating licensees and compliance status, funds owed and collected, and a summary of non-monetary contributions.
- O. The [CITY/COUNTY] shall conduct a periodic review of community benefits agreements at least every 12 months, at which time the licensee subject to the agreement shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the [CITY/COUNTY] finds and determines, on the basis of substantial evidence, that the licensee has not complied in good faith with terms or conditions of the agreement, the [CITY/COUNTY] may terminate or modify the agreement. The [CITY/COUNTY] shall not terminate a community benefits agreement entered into by the [CITY/COUNTY] and a Social Equity Program participant unless such action is considered and approved in writing by the Cannabis Social Equity Commission.

SECTION 5: COMMUNITY REINVESTMENT FUND

- A. The [CITY/COUNTY] shall establish a Community Reinvestment Fund for the purpose of revitalizing Disproportionately Impacted Areas and improving life outcomes for persons with a Prior Cannabis Record and residents of Disproportionately Impacted Areas.
 - 1. Disproportionately Impacted Areas will be identified in a manner determined by the Social Equity Study.²²
 - 2. [CITY/COUNTY] shall consult with community members to determine where the funds should be allocated.

²² As previously stated, we strongly advocate for a data-driven approach to determining which communities have been disproportionately impacted and therefore should be targeted for community reinvestment initiatives and other benefits. However, we recognize that commissioning a Social Equity Study is expensive and may not be feasible for all localities. A less expensive alternative may be to conduct internal analysis of cannabis arrest data to determine a simple standard (e.g., 1.5+ standard deviations above the mean cannabis arrest rate for the City) for identifying "disproportionately impacted" communities. Localities may also consider adding eligibility criteria that are indirectly related to or are results of discriminatory cannabis enforcement on the basis of race and class in an effort to broaden the base of communities and persons that may benefit from the Community Reinvestment Fund.

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- B. On at least an annual basis, a percentage of tax and non-licensing fee revenue from licensed cannabis businesses shall be transferred to the Community Reinvestment Fund.^{23 24}
- C. Community Reinvestment Fund monies shall be used for purposes including, at minimum:
 - 1. Assisting individuals with Prior Criminal Records and residents of Disproportionately Impacted Areas to obtain copies of their criminal record histories;
 - 2. Record or sentence modification for persons with criminal convictions, including development and implementation of regular legal clinic models to access record change services through the public defender's office, legal aid organizations, or local law schools and/or automated solutions;²⁵
 - 3. Reentry services (e.g., job placement voter registration, etc.), especially in Disproportionately Impacted Areas; and
 - 4. Job training for residents of Disproportionately Impacted Areas, including training in management and other areas reasonably expected to help trainees secure higher-level jobs.²⁶

²³ This text will need to be adjusted depending on how cannabis funds will be collected and allocated. We intentionally left little detail regarding appropriations so that the text may be easily adjusted. Localities may consider including details regarding the person or agency that grants fund transfers, where transfers will be made from, who has decision-making authority regarding fund appropriations, and minimum annual transfer thresholds.

Localities should also consider including a directive for an initial appropriation from the General Fund or another appropriate local fund unrelated to cannabis to prevent delays in program roll out. The initial amount borrows could then be reimbursed in full once a sufficient amount of cannabis tax and fee revenue has been collected.

²⁴ **NOTE FOR MCBA BOARD: Thoughts on voluntary contributions from non-social equity businesses (in return for some benefit) as an additional or alternative funding source?**

²⁵ Automated solutions are optimal because they positively impact the greatest number of individuals and demand no further investment of time or money by impacted individuals who have been burdened by the stigma of a criminal record for cannabis. However, we recognize that automated solutions may not be feasible -- politically or otherwise -- in some localities and encourage those localities to pursue expungement and resentencing in an achievable manner (i.e. through the public defender's office, local legal aid organizations, or area law schools with clean slate clinics). We support all expungement and resentencing efforts for prior cannabis offenders in states that have legalized and encourage localities to tailor their approaches as needed to make progress in this area.

²⁶ **NOTE FOR MCBA BOARD: Please consider whether to include any additional purposes for which the Fund monies should be used: community centers; youth programs; health education programs; to support organizations and initiatives that aim to address the impact of racially disproportionate arrests and incarceration, generational poverty, community degradation, housing insecurity, loss of educational and employment opportunities, disruption of family structures, and other burdens of the failed War on Drugs; public libraries; other purposes chosen by a committee of residents of disproportionately impacted areas. (Note that most of these additional items inspired by Barbara Lee's RESPECT Resolution and San Francisco's social equity program. The drafting team thought the three purposes included in the model ordinance**

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5. Community health and nutrition programs, including school based community gardens
6. Community driven asset mapping to determine future needs

SECTION 6: RECORD CHANGE PROVISIONS²⁷

- A. For purposes of this Section 6, "Record Change Process" includes all processes related to the change of one's criminal record to lessen or eliminate the legal consequences associated with a criminal conviction or arrest. This may include, but is not limited to, expungement, vacating, purging, sealing, dismissing, resentencing, reclassification, any combination of the aforementioned, etc. This process may be applicable to all conviction types and criminal justice interactions, including felonies, misdemeanors, infractions, citations, arrests, juvenile adjudications, etc.
- B. For purposes of this Section 6, "Automating" (re: Record Change Process) refers to a process wherein a person convicted and/or arrested for a crime is not required to initiate the record change process on their own. Instead, the city or county prosecutor's office would assess all convictions in their jurisdiction to determine which are eligible to be changed.
- C. [CITY/COUNTY] shall make opportunities available to individuals with criminal convictions and arrests to have their criminal record history, or sentence if they are currently under carceral control,²⁸ modified in accordance with record change statutes in [State]. This shall apply to all conviction types and arrests for which a remedy exists for record modification. [CITY/COUNTY] will take **[one or a combination]** of the following approaches to achieve this goal:
 1. Automating the record change process for cannabis and non-cannabis convictions;

language so far are most critical and that the remaining items could be discussed internally by MCBA Board.)

If the Board is in favor of including other purposes for which the Fund monies may be used, please consider whether some fund uses should be weighted more than others in decisions regarding Fund allocation. For example, expungement, reentry services, and job training could be weighted more than other uses that less directly address the program's intent in an effort to ensure more funds are directed towards high priority Fund uses.

²⁷ Some states, like California, have passed legislation to automate the record change process for prior cannabis convictions. An adopting jurisdiction in such a state could omit this Section. See AB 1793, recently signed into CA law:

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1793

²⁸ Carceral control includes, but is not limited to, prison, jail, probation, parole, and post-release community supervision.

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2. Automating the record change process for cannabis and cannabis-related (i.e., paraphernalia) convictions only and providing information on how to access other record change services in [CITY/COUNTY];
 3. Allocating funds [made available through [CITY/COUNTY]'s general funds, an existing budget, or a local cannabis tax to [CITY/COUNTY]'s public defender's office, legal aid organizations, and/or local law schools that engage in record change work;
 4. Hosting legal fairs in partnership with the [CITY/COUNTY] public defender's office, legal aid organizations, [CITY/COUNTY] agency offices that engage in employment or housing issues, and/or local law schools that engage in record change work to offer post-conviction relief to persons with all conviction types in [CITY/COUNTY]; and/or
 5. Hosting legal fairs in partnership with the [CITY/COUNTY] public defender's office and/or local legal aid organizations to offer post-conviction relief to persons with at least one marijuana conviction [CITY/COUNTY].
- B. [CITY/COUNTY] shall create a directory of attorneys or offices (public defenders, legal aid organizations, etc.) that are willing to represent clients free of charge if their petition for record change is discretionary and they decide to attend a hearing, or if a hearing on their petition is required. [CITY/COUNTY] may consider making this available to persons falling below a designated income level.
- C. [CITY/COUNTY] shall make available through general funds, an existing budget, or a local cannabis tax free access to a convicted person's criminal record history, including, but not limited to, waiver of the following costs:
1. Live Scan or other fingerprinting or background-investigation services, if applicable;
 2. Printing and mailing of criminal records by [CITY/COUNTY] courts or [STATE] agency; and
 3. Administrative fees associated with obtaining a copy of one's record.

SECTION 7: NO ADDITIONAL RESTRICTIONS ALLOWED ON ENTRY INTO CANNABIS INDUSTRY

- A. [CITY/COUNTY] shall place no additional restrictions on who can obtain a license to operate or work in the cannabis industry than those already created by [CITATION TO STATE LICENSING STATUTE], including prior history of substance use disorder or treatment for a substance use disorder, etc.

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- B. Convictions for any crime not related to an applicant's candor or character shall not disqualify them from obtaining a license to operate or seek employment in the cannabis industry. Evidence of rehabilitation may be used in determining whether a person should be licensed to operate or be employed in the industry if their conviction directly relates to the operation of a business.
- C. Applicants who are denied licensure shall have an opportunity to appeal [CITY/COUNTY]'s decision, and shall be provided with an explanation of why their application was denied.
- D. Background checks shall only be used to determine whether an applicant was convicted of a crime that excludes them from state licensing.

SECTION 8: DATA COLLECTION

- A. The agency regulating the licensure of cannabis businesses in [CITY/COUNTY] shall collect demographic data on all applicants and for all application types in [CITY/COUNTY]. This shall include, but not be limited to, information on race, ethnicity, gender, income level, prior convictions, and veteran status. The data will be used to inform future efforts to create more equity in [CITY/COUNTY] cannabis industry.
- B. Cannabis businesses in [CITY/COUNTY] shall report to the extent allowed under state law the demographic information on their workforce, including information on race, ethnicity, gender, income level, prior convictions, and veteran status.
- C. [CITY/COUNTY] will collect data on law enforcement involvement related to cannabis law violations, including the violation type, race, ethnicity, and gender.
- D. This information will be consolidated and reported without individual identifying information, and posted to the agency's website annually.

SECTION 9: LOWEST LAW ENFORCEMENT PRIORITY

- A. [CITY/COUNTY] shall make investigation, citation, and arrest for cannabis law violations the lowest law enforcement priority. This does not apply to distribution to minors.
- B. The following shall not constitute reasonable articulable suspicion of a crime in the absence of other factors:
 - 1. The odor of burnt or unburnt marijuana;
 - 2. The possession of or suspicion of possession of cannabis that does not exceed the legal limit in [STATE];
 - 3. The possession of multiple containers of cannabis without evidence of excess of the legal limit in [STATE].

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- C. [CITY/COUNTY] shall make all reasonable efforts to create spaces for on-site consumption as allowed under state law.

SECTION 10: PERMITTING SOCIAL CONSUMPTION LOUNGES

- A. "Consumption Lounge" means a permitted premises where cannabis goods and products may be brought and/or purchased there for on-site consumption, and consumed by persons 21 years of age and over.
- B. Consumption Lounges may sell cannabis-infused food items and non-cannabis-infused food items, and allow consumption of food and drink.
- C. Consumption Lounges must notify patrons that entry by persons under age 21 is prohibited, including but not limited to posting a conspicuous sign at the entry that states: "Entry into this premises by persons under age 21 is prohibited."
- D. Consumption Lounges must notify patrons that cannabis consumption can impair driving ability, including but not limited to providing information on local car services, public transportation, and ride-share programs.
- E. Consumption Lounges must train their personnel about the various products provided, including their potency, absorption time, and effects. In an effort to ensure responsible consumption, Consumption Lounge personnel must educate all customers about products' potency, absorption time, and effects.
- F. Any ordinance or rule that establishes hours of operation or creates a distance restriction from other types of facilities or uses shall be no more restrictive than the most restrictive hours of operation or distance restriction in [STATE] law or any rule promulgated by the [AUTHORITY OF CITY/COUNTY] placed upon new applicants for a license permitting the sale of alcoholic beverages for on-site consumption.

SECTION 11: ELIMINATING SUSPICIONLESS DRUG TESTING

- A. No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment without reasonable documented cause; provided, however, that an employer may request such testing upon reasonable notice, but only for employees who work in sensitive job functions where the physical safety of such employee or others at the licensee's facility may be jeopardized by the employee's consumption of cannabis or other controlled substances.
- B. Under no circumstances may employers request, require, or conduct random or company-wide blood, urine, or encephalographic testing.

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- C. In any action alleging that the employer violated this section, the employer shall have the burden of proof.

STATEMENT OF
ERIC M. GOEPEL
FOUNDER, VETERANS CANNABIS COALITION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

“UNLOCKING POTENTIAL: SMALL BUSINESS IN THE
CANNABIS INDUSTRY”

WASHINGTON, D.C.
JUNE 19, 2019



Veterans Cannabis Coalition
1405 S Fern St. #478, Arlington, VA 22202
www.veteranscannacoalition.org

Chairman Velazquez, Ranking Member Chabot, and Members of the House Committee on Small Business,

The Veterans Cannabis Coalition would like to thank you for the opportunity to address the Committee on veterans and cannabis issues currently under consideration. We would especially like to thank the Committee for its foresight in tackling some of the many issues that have arisen as citizens grapple with the conflict between federal and state laws regarding cannabis.

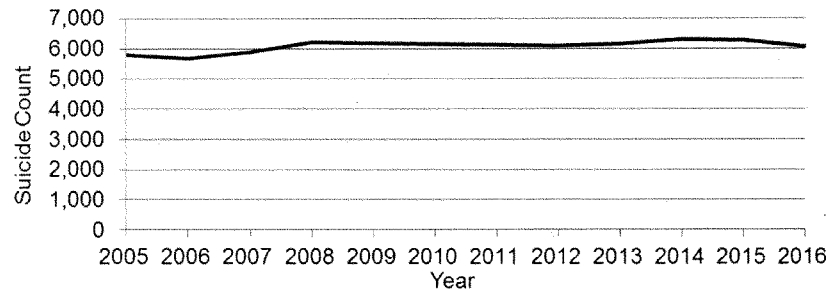
Introduction

The Veterans Cannabis Coalition works to end federal cannabis prohibition and drive research and development of cannabis-based medications through the Department of Veterans Affairs. We help to organize and facilitate the work of other veteran advocates, we educate the public and elected officials about cannabis and veterans policy and research, and we advocate for specific solutions. I co-founded VCC with a fellow Iraq War veteran and advocate, Bill Ferguson. We live in a community that has been wracked by suicide and overdose for years and we saw the disconnect between what people said was working for them, what the healthcare system was giving them, flawed federal law that criminalized people for self-care, and Congressional priorities. We also shared a need to serve others in a meaningful way, as we saw the years stretch into decades as parents and children become veterans of the same conflicts while at least 100,000 have died of suicide and overdose (based on an average of 6,000 suicide deaths a year from 2005-2016—we assume suicide rates have remained steady since 2016 based on current reporting and that suicide pre-2005 totaled at least several thousand over that period).¹

We refused to stand idly by while opportunities for positive change fell to the wayside because of political inertia and the agendas of those who kneel before the status quo. We saw the need in our community to persistently and effectively advocate for reform on behalf of the many who cannot. The Veterans Cannabis Coalition, in the end, strives to restore opportunity and repair the damage caused by what has always been a war on people. In light of what we know about the politics of prohibition and the science of cannabis, we must make right the many wrongs inflicted on the citizens of this country out of a desire for authoritarian control of individual behavior and to punish with the power of the state. This Committee can take many steps to empower veterans and all Americans to engage with the cannabis by removing what barriers it can and creating incentives.

¹Department of Veterans Affairs. (Sep 2018) *VA National Suicide Data Report (2005-2016)*. https://www.mentalhealth.va.gov/docs/data-sheets/OMHSP_National_Suicide_Data_Report_2005-2016_508.pdf. Retrieved Jun 16, 2019.

Figure 1: Veteran Suicides, 2005–2016

Figure 1. Excerpted from *VA National Suicide Data Report (2005-2016)*.²

Fruit of the Poisonous Tree: Cannabis Prohibition in the U.S.

Cannabis prohibition is, at its heart, the fruit of the poisonous tree of racism and ignorance. As the end of alcohol prohibition neared, in 1930 there began a concerted campaign organized by the then U.S. Department of Treasury's Bureau of Narcotics to federally control cannabis, led by its founding commissioner Harry Anslinger.³

In radio addresses in support of the campaign, Anslinger described cannabis turning young people into "slaves to this narcotic, continuing addiction until they deteriorate mentally, become insane, turn to violent crime and murder."⁴ Here is how Anslinger variously described cannabis and its effects throughout his testimony on H.R.6385, the Marihuana Tax Act of 1937⁵:

Here we have a drug that is not like opium. Opium has all of the good of Dr. Jekyll and all the evil of Mr. Hyde. This drug is entirely the monster Hyde, the harmful effect of which cannot be measured. ... Some people will fly into a delirious rage, and they are temporarily irresponsible and may commit violent crimes. Other people will laugh uncontrollably. It is impossible to say what the effect will be on any individual. Those research men who have tried it have always been under control. They have always insisted upon that. ... It is dangerous to the mind and body, and particularly dangerous to the criminal type, because it releases all of the inhibitions.⁶

² Ibid.

³ Adams, Cydney. (Nov 17, 2016) "The man behind the marijuana ban for all the wrong reasons." CBS News. <https://www.cbsnews.com/news/harry-anslinger-the-man-behind-the-marijuana-ban/>. Retrieved Jun 16, 2019.

⁴ Ibid.

⁵ Marihuana Tax Act of 1937. United States Congress. Schaffer Library of Drug Policy. <http://www.druglibrary.org/Schaffer/hemp/taxact/mjtaxact.htm>. Retrieved June 16, 2019.

⁶ Anslinger, Harry. (1937) "Statement of H.J. Anslinger on H.R.6385." Schaffer Library of Drug Policy. <http://www.druglibrary.org/schaffer/hemp/taxact/anslng1.htm>. Retrieved June 16, 2019.

Anslinger had spent the preceding years gathering and disseminating⁷ reports to the media and Congress tying cannabis to violent crime allegedly committed by Latinx and African American individuals under the influence and framing cannabis as a threat to young whites.⁸ Propaganda films like *Reefer Madness* (1936) reflected the popular anti-drug sentiment and echoed instances of cannabis-induced crime Anslinger popularized.⁹ After its passage, for the next 32 years the Marihuana Tax Act effectively criminalized cannabis by placing extraordinary costs on requirements for its legal possession, importation, and sale.

The Marihuana Tax Act stood for over three decades before being overturned in *Leary v. United States* in 1969 on narrow constitutional grounds.¹⁰ The U.S. Congress repealed the Marihuana Tax Act the following year and replaced it with the Comprehensive Drug Abuse Prevention and Control Act of 1970.¹¹ Under Title II, the Controlled Substances Act (CSA), cannabis (or the slang “marihuana” or “marijuana” as it referred to throughout U.S. code) was placed in Schedule I, the most restrictive category, reserved for substances that have: A) a high potential for abuse; B) no currently accepted medical use in treatment in the United States; C) a lack of accepted safety for use under medical supervision.¹²

Following the passage of the Marihuana Tax Act in 1937 and the Comprehensive Drug Abuse Prevention and Control Act in 1970, there were government reports generated by the LaGuardia Committee in New York City in 1944 and the federal Shafer Commission in 1972 that examined cannabis policy and health issues. After more than five years of research, the New York Academy of Medicine, on behalf of the committee appointed by New York City Mayor Fiorello LaGuardia, issued a report that categorically denied the many spurious and unscientific claims made by Anslinger and the Federal Bureau of Narcotics.¹³ Appointed by President Richard Nixon, the Shafer Commission, formally known as the National Commission on Marihuana and Drug Abuse, recommended ending cannabis prohibition and criminalization and finding other means to reduce problematic use.¹⁴

⁷DEA Museum Lecture Series. (Oct 15, 2014). “Standing in the Shadows: The Legacy of Harry J. Anslinger.” <https://www.deamuseum.org/wp-content/uploads/2015/08/101514-DEAMuseum-LecturesSeries-StandingintheShadows-transcript.pdf>. Retrieved Jun 16, 2019.

⁸Encyclopedia of Drugs, Alcohol, and Addictive Behavior. (2001). “Anslinger, Harry Jacob, and U.S. Drug Policy.” <https://www.encyclopedia.com/education/encyclopedias-almanacs-transcripts-and-maps/anslinger-harry-jacob-and-us-drug-policy>. Retrieved Jun 16, 2019.

⁹Lee, Martin A. (Feb 1, 2013) “Book Excerpt: Origins of Reefer Madness.” Fairness and Accuracy in Reporting (FAIR). <https://fair.org/home/book-excerpt-the-origins-of-reefer-madness/>. Retrieved Jun 16, 2019.

¹⁰*Leary v. United States*. (May 19, 1969). United States Supreme Court.

<https://cdn.loc.gov/service/ll/usrep/usrep395/usrep395006/usrep395006.pdf>. Retrieved Jun 16, 2019.

¹¹*Comprehensive Drug Abuse Prevention and Control Act of 1970*. United States Congress. Oct 27, 1970.

<https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf>. Retrieved Jun 16, 2019.

¹² *Ibid*.

¹³*LaGuardia Committee Report*. New York City Mayor’s Committee on Marihuana. 1944.

<http://www.druglibrary.net/schaffer/Library/studies/lag/lagmenu.htm>. Retrieved Jun 16, 2019.

¹⁴Nahas, G., and Greenwood, A. (1972). *The First Report of the National Commission on Marihuana: Signal of Misunderstanding Or Exercise In Ambiguity*.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1749335/pdf/bullnyacadmed00168-0058.pdf>. Retrieved Jun 16, 2019.

Since cannabis was placed in Schedule I in 1970, there have been more than 30,000 entries for “marijuana” made in PubMed, a government website that serves as a portal and repository of medical research operated by the US National Library of Medicine, part of the Department of Health and Human Services (HHS).¹⁵ In 1986, the Drug Enforcement Administration (DEA) rescheduled dronabinol—the compound Δ^9 -tetrahydrocannabinol (delta-9-THC)—which is chemically identical to the common psychoactive cannabinoid found in the cannabis plant.¹⁶ Since 2003, HHS has maintained patent #US6630507B1 “Cannabinoids as antioxidants and neuroprotectants” on non-psychoactive cannabinoids (compounds found naturally in the cannabis plant or made synthetically that interact with vertebrate endocannabinoid system (ECS)).¹⁷ In 2004, the Food and Drug Administration (FDA) approved Marinol, with its active ingredient dronabinol (synthetic THC), for: “1) anorexia associated with weight loss in patients with AIDS; and 2) nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments.”¹⁸

The DEA issued a policy statement in August 2016 wherein the Administration adopted “a new policy that is designed to increase the number of entities registered under the Controlled Substances Act (CSA) to grow (manufacture) marijuana to supply legitimate researchers in the United States.”¹⁹ In November 2017, the National Academies of Sciences published a comprehensive review of 10,000 cannabis-related studies titled *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*.²⁰ They found “There is conclusive or substantial evidence that cannabis or cannabinoids are effective:

- For the treatment for chronic pain in adults (cannabis) (4-1)
- Antiemetics in the treatment of chemotherapy-induced nausea and vomiting (oral cannabinoids) (4-3)
- For improving patient-reported multiple sclerosis spasticity symptoms (oral cannabinoids) (4-7a)²¹

¹⁵US National Library of Medicine. “Marijuana”. Department of Health and Human Services.

<https://www.ncbi.nlm.nih.gov/pubmed/?term=marijuana>. Retrieved Jun 16, 2019.

¹⁶Drug Enforcement Agency. (May 13, 1986). Federal Register. Vol. 51, No. 92.

https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1986/5/13/17464-17478.pdf#page=13. Retrieved Jun 16, 2019.

¹⁷Hampson, A., Axelrod, J., Grimaldi, M. (2003) “Cannabinoids as antioxidants and neuroprotectants.” Department of Health and Human Services. <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&p=1&u=/netahtml/PTO/srchnum.html&r=1&f=G&l=50&d=PALL&sl=6630507.PN>. Retrieved Jun 16, 2019.

¹⁸Food and Drug Administration. (2004) “Marinol.” NDA 18-651/S-025 and S-026.

https://www.accessdata.fda.gov/drugsatfda_docs/label/2006/018651s025s026lbl.pdf. Retrieved Jun 16, 2019.

¹⁹ Drug Enforcement Administration. (August 12, 2016). “Applications to Become Registered Under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States.” Federal Register. Vol. 81, No. 156. https://www.deadiversion.usdoj.gov/fed_regs/rules/2016/fr0812_3.pdf. Retrieved Jun 16, 2019.

²⁰National Academies of Science, Engineering, Medicine. (Nov 2017) *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*.

<http://nationalacademies.org/hmd/Reports/2017/health-effects-of-cannabis-and-cannabinoids.aspx>. Retrieved Jun 19, 2019.

²¹National Academies of Science, Engineering, Medicine. (Jan 2017). “The Health Effects of Cannabis and Cannabinoids: Committee’s Conclusions.”

<http://nationalacademies.org/hmd/~/media/Files/Report%20Files/2017/Cannabis-Health-Effects/Cannabis-conclusions.pdf>. Retrieved Jun 16, 2019.

In May 2018, the HHS Assistant Secretary for Health Dr. Brett Giroir wrote a letter to DEA Acting Administrator Robert Patterson stating “HHS is recommending that the substance cannabidiol (CBD) [a major cannabinoid found in the cannabis plant] ...be controlled in Schedule V [the least restrictive schedule] of the CSA.”²² In September 2018, the DEA issued the rule “Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements.” This rule placed the recent FDA-approved drug Epidiolex—the active component of which is whole-plant cannabis-derived CBD—in a category to be sold legally for the treatment of seizures caused by rare forms of epilepsy.²³

Since the CSA went into effect in 1970, 46 states, three territories, and the District of Columbia have passed laws legalizing everything from regulated adult-use cannabis markets to the heavily restricted low-THC, high-CBD product only systems.²⁴ The vast majority of state and territorial law is currently in violation of U.S. code and the Supremacy Clause of the Constitution; meanwhile Pew Research Center, having polled sentiment on this particular issue for decades, found that from a low of 12% in favor of cannabis legalization in 1969, in 2018 62% of Americans supported legalization.²⁵

Veterans: Patients, Advocates, and Entrepreneurs

All the preceding information is meant to paint a picture of the mountain of inconsistencies and the incredible distance between federal and state law and basic science and freedom. Veterans, because of their regular interaction with the federal government for healthcare, education, housing, and employment, find themselves particularly impacted by federal cannabis prohibition. According to surveys by the American Legion²⁶ of veteran households and Iraq and Afghanistan Veterans of America (IAVA) of their membership²⁷, more than 1-in-5 veterans use or have used cannabis for medicinal reasons, more than 80% support medicinal cannabis access, and 93% of IAVA members would be “interested in using cannabis or cannabinoid products as a treatment option if it were available to” them.

²²Drug Enforcement Administration. (May 16, 2018). DEA-2018-0014.

<https://www.regulations.gov/document?D=DEA-2018-0014-0002>. Retrieved Jun 16, 2019.

²³Food and Drug Administration. (Jun 26, 2018) “FDA approves first drug comprised of an active ingredient derived from marijuana to treat rare, severe forms of epilepsy.” <https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms>. Retrieved Jun 16, 2019.

²⁴ State Medical Marijuana Laws. (2019). National Conference on State Legislatures.

<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. Retrieved Jun 16, 2019.

²⁵ Hartig, H., and Geiger, A.W. (Oct 8, 2018). “About six-in-ten Americans support marijuana legalization.” Pew Research Center. <https://www.pewresearch.org/fact-tank/2018/10/08/americans-support-marijuana-legalization/>. Retrieved Jun 16, 2019.

²⁶The American Legion. (Nov 2, 2017). “Survey shows veteran households support research of medical cannabis.” <https://www.legion.org/veteranshealthcare/239814/survey-shows-veteran-households-support-research-medical-cannabis>. Retrieved Jun 16, 2019.

²⁷Iraq and Afghanistan Veterans of America. (Jan 30, 2019). “IAVA Releases 2019 Annual Member Survey, Revealing Diverse Opinions among Post 9-11 Veterans.” <https://iava.org/press-release/iava-releases-2019-annual-member-survey/>. Retrieved Jun 16, 2019.

There is obvious interest, demand, and support, both scientific and public, for a variety of reforms to federal cannabis laws. Research and access issues affecting veterans have been raised in several current pieces of legislation before the 116th Congress, particularly H.R.712, the VA Medicinal Cannabis Research Act,²⁸ and H.R.1647, the Veterans Equal Access Act.²⁹ The bills would direct the Department of Veterans to conduct cannabis research within certain parameters and would permit VA physicians to recommend medicinal cannabis in states adult-use and medicinal states, respectively. The VA opposed the VA Medicinal Research Act on the grounds that they are already conducting research (one trial with CBD to be completed in 2023) and the Veterans Equal Access Act because there is not enough evidence for doctors to make recommendations about cannabis.³⁰ The circular nature of the problem should be clear.

Veterans have long been at the leading edge of cannabis reform. Veterans of the Vietnam War, exposed to cannabis during their tours in southeast Asia, returned to a country that preferred to hate or ignore them and offered little assistance or compassion. Some turned to growing and consuming cannabis because it was often the only effective substance available to them to deal with conditions ranging from post-traumatic stress disorder to Agent Orange and other toxic chemical exposure.³¹ The most notable veteran advocate was an individual that intersected with several communities, as every veteran does. Dennis Peron, the “Father of Medical Marijuana” was a Vietnam War draftee, a U.S. Air Force veteran, and an advocate for cannabis, the LGBTQ+ community, and patients with AIDS, cancer, and the numerous conditions and illnesses that cannabis could treat.³² Peron would help organize a broad popular coalition that passed a California state initiative called Proposition 215 that legalized cannabis under certain circumstances for medical purposes in 1996.³³ From the veteran farmers in northern California who grew cannabis for decades under threat of incarceration while supporting thousands of medical patients, to the numerous veterans who have stepped up and made their voices heard everywhere from federal court³⁴ to Capitol Hill,³⁵ veterans understand what is stake—the health, and ultimately lives, of their comrades, their friends, and their families.

²⁸Correa, L. (2019). H.R.712, the *VA Medicinal Cannabis Research Act of 2019*. U.S. Congress.

<https://www.congress.gov/bills/116/congress/house-bills/712/text>. Retrieved Jun 16, 2016.

²⁹Blumenauer, E. (2019). H.R.1647, the *Veterans Equal Access Act of 2019*. U.S. Congress.

<https://www.congress.gov/bills/116/congress/house-bills/1647/text>. Retrieved Jun 16, 2019.

³⁰Franklin, Kieta. “Statement of Dr. Keita Franklin before the House Committee on Veterans Affairs Subcommittee on Health. (Apr 30, 2019). Department of Veterans Affairs.

<https://docs.house.gov/meetings/VR/VR03/20190430/109385/HHRG-116-VR03-Wstate-FranklinK-20190430.pdf>

³¹Kennedy, Bruce. (Apr 30, 2018). “Medicating in Wartime: The Cannabis Legacy of Vietnam Veterans.” *Leafly*. <https://www.leafly.com/news/politics/medicating-in-wartime-the-cannabis-legacy-of-vietnam-veterans>. Jun 16, 2019.

³²Barcott, Bruce. (Jan 27, 2018). “America Mourns Passing of Dennis Peron, Father of Medical Marijuana.” <https://www.leafly.com/news/politics/america-mourns-passing-of-dennis-peron-father-of-medical-marijuana>

³³Ballotpedia. “California Proposition 215, the Medical Marijuana Initiative (1996).”

[https://ballotpedia.org/California_Proposition_215_the_Medical_Marijuana_Initiative_\(1996\)](https://ballotpedia.org/California_Proposition_215_the_Medical_Marijuana_Initiative_(1996)). Retrieved Jun 16, 2019.

³⁴Hasse, Javier. (May 31, 2019). “Federal Appeals Court Rules DEA, Federal Govt. Must ‘Promptly’ Reassess Marijuana’s Illegality.” *Forbes*. <https://www.forbes.com/sites/javierhasse/2019/05/31/federal-appeals-court-rules-dea-federal-govt-must-promptly-reassess-marijuanas-illegality/>. Retrieved Jun 16, 2019.

³⁵Nixon, Dennis. (Feb 26, 2019) “Statement of Dennis R. Nixon Before the Committees on Veterans’ Affairs.” Disabled American Veterans.

<https://www.veterans.senate.gov/imo/media/doc/PDF%202020.19%20Nixon%20HVC%20SVAC%20Joint%20Testimony%202019.pdf>. Retrieved Jun 16, 2019.

Veterans have been an integral part of the networks that have produced and distributed cannabis, from the aforementioned small rural farmers to operators of state-legal medical dispensaries to manufacturers of high-quality medicinal cannabis products. They are some of the most prominent victims, innovators, and supporters of patients in the war on cannabis. Like too many others, veterans have had their property seized, their bank accounts closed, and their freedom stripped away for the crime of growing, possessing, or selling a useful plant. To look at the number of people who have been brutalized by government for so-called crimes related to cannabis is to see an historic failure of political will and public policy that has enabled this to go on for decades.

The Future of Veterans and Cannabis in the United States

There is a veteran in every community: veteran status intersects with every conceivable demographic. Veterans issues are American issues: mental and physical health, employment, education, housing, fulfilment and purpose—veterans face additional obstacles arising from their military service, but these challenges themselves are not unique to veterans. As a population that the federal government has an explicit obligation to care for and study, however, veterans offer a window into larger trends effecting the American people.

There are, however, many ways that veterans can run afoul of federal law and regulation even if they compliant with their state. For example, a recent case saw a veteran working in the cannabis industry in Massachusetts denied a VA-backed home loan because of his choice of legal employment.³⁶ A Small Business Administration (SBA) policy notice from April 2018 stated that any business that engages with cannabis directly, as well as indirect businesses that “derived any of its gross revenue for the previous year...from sales to Direct Marijuana Businesses of products or services that...support the use, growth, enhancement or other development of marijuana” is ineligible for any SBA programs.³⁷ That policy effectively cuts off all SBA assistance to businesses that have any conceivable relationship with any entity directly or indirectly involved with cannabis.

Within the cannabis sector, as they do in every other field, veterans bring to the table both hard and soft skills necessary for successful business operations. From technical know-how in disciplines like supply chain logistics and information technology to intangible qualities like leadership and perseverance, veterans offer advantages to any potential employer.³⁸ Yet the many dangers posed by conflicting state and federal law on cannabis, which extends into basic liberties like restricting child custody or the Constitutional right to keep and bear arms, discourages many veterans from considering participating. Considering the synergy that veterans

³⁶Kopp, Emily. (Jun 3, 2019). “Veterans are being denied this GI Bill benefit if they work in cannabis.” *Roll Call*. <https://www.rollcall.com/news/veterans-denied-gi-bill-benefit-if-they-work-in-cannabis>. Retrieved Jun 16, 2019.

³⁷Small Business Administration. (April 3, 2018). “Revised Guidance on Credit Elsewhere and Other Provisions inSOP 50 10 5(J).” https://www.sba.gov/sites/default/files/resource_files/SBA_Policy_Notice_5000-17057_Revised_Guidance_on_Credit_Elsewhere_and_Other_Provisions.pdf. Retrieved Jun 16, 2019.

³⁸Gosselin, Chris. (Nov 11, 2016). “Why America’s Veterans Make the Best Entrepreneurs.” *Fortune*. <http://fortune.com/2016/11/11/veterans-day-leadership-ceo/>. Retrieved Jun 16, 2019.

have long maintained with cannabis, it is a disservice for government to prevent those who served when called on from pursuing their life and liberty.

This Committee has the authority to put forward changes, like to April 2018 SBA policy statement, to remove barriers to assistance for American small businesses who wish to engage with the cannabis sector. The Committee can also begin to look down the road to the many needs of a complex industry that can produce hundreds, if not thousands, of medicinal, commercial, and industrial goods from cannabis. Research and development of all the potential applications of the plant hold incredible promise to disrupt everything from pharmaceuticals and medical treatments to commodities like biofuels and livestock feed. Within a future trillion-dollar market for cannabis-derived products, there will be demand for every skill and resource. Veterans can, and will, be a part of this—whether they have the support of the government, and in what way, remains to be seen.

What the movement for cannabis reform offers is the ways and means to achieve positive ends. The ways are methods and strategies—they are day-to-day advocacy that sees patients and doctors challenge stigma and ignorance and voters choose time and again to force their state legislatures to change laws. The means are resources—it is the political will, money, time, and people necessary to create generational change. The ends are the outcome, the end state. What millions of Americans are working toward are ends that ensure government recognizes the compounded error of prohibition and does whatever is necessary to make the people it harmed whole. The ends are the elimination of government's arbitrary, authoritarian, and punitive restrictions and threats to people who interact with cannabis.

Veterans continue to play an important role throughout the ongoing development of the cannabis industry and in the fight for legal reforms. What binds those of us engaged in this work is the knowledge that what we seek to make known and accessible to every person is of tremendous benefit to the individual and society as a whole.

We thank you for your consideration of our perspective on these issues and stand ready to serve as an ongoing resource in the Committee's discussions.



ORAL TESTIMONY OF

DANA CHAVES

SENIOR VICE PRESIDENT AND DIRECTOR OF SPECIALTY BANKING

FIRST FEDERAL BANK

LAKE CITY, FLORIDA

ON BEHALF OF

THE NATIONAL CANNABIS INDUSTRY ASSOCIATION

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

JUNE 19, 2019

Chairwoman Velazquez, Ranking Member Chabot, and Members of the Committee, I am Dana Chaves, Senior Vice President and Director of Specialty Banking at First Federal Bank in Lake City, Florida. Thank you for the opportunity to testify before the Committee today to discuss the importance of unlocking access to affordable capital for small businesses in the regulated cannabis industry. I am pleased to provide a first-hand account of how local community banks can invest in aspiring entrepreneurs and new businesses to help facilitate economic development and job growth, especially in underserved areas. I will briefly summarize my written testimony and I look forward to answering your questions.

First Federal Bank is a mutual holding company which was established in 1962 and has 750 employees. We currently have 23 branches, 17 mortgage offices, and operate in eight states with almost \$2 billion total assets including, approximately 75,000 customers. We launched our cannabis banking program on April 1, 2019, and to date, we have opened 62 accounts tied to Marijuana-Related Businesses or MRBs. We classify these accounts into three Tiers: Tier I are direct plant touching businesses such as dispensaries and cultivators; Tier II are ancillary businesses, investment accounts, and depository accounts; and Tier III are businesses involved in medical marijuana. We also serve CBD companies, as they too are dealing with issues related to

financial services. We have over 55 Tier I, II, and III pending applications and several are currently under our due diligence review, which can take several weeks to complete.

I am also testifying on behalf of the National Cannabis Industry Association (NCIA), the largest national trade association dedicated to protecting state-regulated cannabis businesses and advancing policy reforms needed to align federal and state cannabis laws. Currently, I am the Chair of the NCIA Banking Access Committee and have helped publish several industry reports to assist and educate financial institutions and state regulatory agencies on cannabis-related banking.

To date, forty-seven states and the District of Columbia, as well as Guam, the Northern Mariana Islands, and Puerto Rico have passed legislation authorizing some form of cannabis for regulated medical or adult-use purposes. Additionally, thirty-three states have enacted laws regulating the commercial production and sale of medical or adult-use marijuana, including my home state of Florida. However, because cannabis remains a Schedule I drug under the federal Controlled Substances Act, licensed cannabis-related businesses have been effectively locked out of accessing basic financial services, including the traditional loans and programs established by the Small Business Administration (SBA), such as the 7(a) loan guaranty program, the 504/Certified Development Company loan guaranty program, the Microloan program, and disaster relief efforts.

With my testimony today, I hope this Committee will develop and pass legislation that expands access to business loans and lending programs under the jurisdiction of SBA for cannabis-related business, many of which are led by aspiring entrepreneurs or are minority or women-owned. Also, I hope all members of the Committee will support H.R. 1595 - *the Secure And Fair Enforcement (SAFE) Banking Act*. The bill, which currently has over 200 bipartisan cosponsors, would permit banking and depository services to licensed cannabis-related businesses, including ancillary businesses.

Given the current lack of clarity for cannabis banking as well as the inability for SBA to partner with community banks to assist MRBs, I have seen (and continue to see) those involved in the state-regulated cannabis industry struggle. As an example, an executive who left a Fortune 500 to work for a First Federal client was refinancing his home with a large national bank. The executive had a long-standing relationship with the bank that went back several years. Despite this relationship, thirty minutes before closing, the bank informed him that they could no longer refinance his home because they found that he is now employed at an ancillary company that supports MRBs. First Federal had to step in to provide the refinancing service. While this example had a positive outcome, First Federal has several requests for lending from MRB clients and we are not in a position to provide these services due to the current regulatory environment. In another instance, I know of a business with clients in eleven states who needs capital to expand so they can service their new clients. The company is unable to secure the lending required to purchase the equipment needed in order to fulfill those contracts.

Since 2014, the U.S. Department of the Treasury's Financial Crime Enforcement Network (FinCEN) has maintained guidance regarding the conditions under which financial institutions may work with cannabis-related businesses. These conditions include an array of federal requirements financial institutions must meet in order to provide banking services to licensed cannabis-related business, such as preventing distribution of cannabis to minors, preventing

revenue from the sale of cannabis to criminal enterprises and cartels, and ensuring cannabis activities and transactions are not being diverted to a state where it is not legal, among others. As a provider of small business loans, it is frustrating that SBA has not incorporated a similar approach.

First Federal Bank receives calls daily from MRBs who were notified by their former banks that their accounts are closed. One client received a call from their credit union who closed their account and gave the client only 1 hour to arrive at the branch, finalize the paperwork to close their account and pick up a cashier's check for their funds, which was over three million dollars. To accommodate the client, our entire compliance team gave its full attention, at the expense of other accounts, to complete our due diligence review in time to open an account the same day. Unfortunately, we cannot do this for every client, and we see similar cases happen almost daily.

The confusion created by conflicting federal and state laws does not end with cannabis cultivators, manufacturers, distributors, and retailers. There are many regulatory unknowns associated with providing banking services to businesses that provide services to these cannabis companies. These regulations can make it difficult to provide financial services, including SBA loans, to common Main Street businesses. There is no question that expanding affordable capital and lending capacity from SBA to licensed cannabis-related companies and the everyday businesses that support them would promote dependable economic development and provide growth for cities and communities, boosting the overall economy of our nation.

I want to thank the Chair, Ranking Member, and the Committee for your time to discuss expanding access to SBA's loan programs for the regulated cannabis industry. This topic is important and has economic consequences for businesses and community banks all across America. I urge the Committee to develop and pass legislation that allows SBA to provide the regulated cannabis industry with affordable capital necessary to increase economic opportunity and support job growth.

I again thank the committee for the opportunity to submit testimony today and I look forward to your questions.

**“UNLOCKED POTENTIAL:
SMALL BUSINESSES IN THE CANNABIS INDUSTRY”
HEARING BEFORE THE HOUSE SMALL BUSINESS COMMITTEE
WRITTEN STATEMENT OF PAUL J. LARKIN, JR.
JUNE 17, 2019**

**“UNLOCKED POTENTIAL:
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WRITTEN STATEMENT OF PAUL J. LARKIN, JR.
JUNE 17, 2019**

Madame Chairwoman, Mr. Ranking Member, and Members of the Committee:

Thank you for the opportunity to testify today. My name is Paul J. Larkin, Jr. I am the John, Barbara, and Victoria Rumpel Senior Legal Research Fellow at The Heritage Foundation. I testify on my own behalf, however, not on behalf of Heritage.¹ One of the areas of my research and writing is drug policy. I will draw on that work for my presentation today.

I would like to make four points. The first three relate to the general issue of whether, and if so how, to revise the provisions in Title 21 dealing with marijuana, whether for small or large businesses. I make those points because the committee could decide to treat small business differently from large corporations, in the hope that they will not become the equivalent for marijuana of what happened in the tobacco industry: the growth of large-scale commercial enterprises.² The issue is also under consideration by other committees and legislators. My last point offers an alternative to large- or small-scale privately owned and operated marijuana distribution businesses. If Congress were now to decide to legalize the recreational use of marijuana, I think that it would be a mistake to turn immediately to a private ownership and distribution model, rather than rely on the model that some states—such as my home state of Virginia—use for the distribution of distilled spirits: state ownership of distribution facilities.

My four points are these: *First*, the federal government, not the states, decides whether to create exceptions to federal law. Accordingly, Congress, not the states, should decide whether federal law should permit the medical or recreational use of marijuana. *Second*, the marijuana plant contains cannabinoids (biologically active ingredients) that have medical uses, but smoking marijuana is not a therapeutically valuable delivery mechanism. Accordingly, the question that Congress should consider is whether Title 21 should be revised to allow marijuana to be used for recreational purposes. *Third*, as part of that inquiry Congress should decide how to help ameliorate the injuries and deaths that will result on the nation’s roads from crashes caused by people who use marijuana and drive. *Fourth*, if Congress were to legalize recreational marijuana use, it should require that states own and manage distribution facilities.

¹ I note my title and affiliation only for identification purposes. Members of The Heritage Foundation (Heritage) staff testify as individuals discussing their own independent research. The views expressed here are my own and do not reflect an institutional position for Heritage or its board of trustees. Heritage is a public policy, research, and educational organization recognized as exempt under Section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work. Heritage is the most broadly supported think tank in the United States. During 2017, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2017 income came from the following sources: Individuals 71%, Foundations 9%, Corporations 4%, Program revenue and other income 16%. The top five corporate givers provided Heritage with 3.0% of its 2017 income. The national accounting firm of RSM US, LLP, annually audits Heritage’s books.

² Mergers and acquisitions will take place in this industry. See, e.g., *Medicine Man Agrees to Acquire Colorado’s Largest Outdoor Marijuana Grower. Manufacturer*, MARIJUANA BUSINESS DAILY, June 5, 2019, <https://mjbiz-daily.com/medicine-man-agrees-to-acquire-colorados-largest-outdoor-marijuana-grower-manufacturer/>. In this industry, as in others, there could eventually be only small number of large businesses.

I. IT MAKES NO SENSE TO DELEGATE TO THE STATES THE AUTHORITY TO DECIDE WHETHER TITLE 21 OF THE U.S.C. CODE APPLIES TO MARIJUANA³

For more than 80 years, federal law has prohibited the cultivation and distribution of marijuana. In 1970, Congress placed marijuana in Schedule I of the Controlled Substances Act, a category reserved for drugs that are, as a practical matter, unhelpful and dangerous. In that law, Congress authorized the attorney general to reclassify marijuana, but no attorney general has ever done so. Many people think that the current classification is wrongheaded, while others disagree. The debate has gone back and forth for decades without Congress re-entering the fray, let alone resolving the issue.⁴

Today, however, there are several proposals before Congress to modify Title 21 of the U.S. Code to make it easier for individuals to possess and distribute marijuana. One such bipartisan proposal is H.R. 2093, the Strengthening the Tenth Amendment Through Entrusting States Act, which has the short name the STATES Act.⁵ Section 2 of the STATES Act would exempt from Title 21 “any person” who “act[s] in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana.”

To say that the STATES Act proposes a novel approach to the relationship between federal and state is quite an understatement. The effect of the STATES Act would be to flip on its head the Supremacy Clause of Article VI of the Constitution because the Act would empower states to pre-empt federal law.⁶ If Congress were serious about that approach to legislation, entire fields of federal law would be open to revisitation. Were drugs like heroin at issue, or were any other subject matter at stake—that is, were the question one involving environmental law, employment discrimination law, securities law, telecommunications law, and so forth—no one would claim that Congress should empower the states to erase federal law. We do not let states legalize heroin to be used for medicinal purposes, nor do we let the states opt out of the Clean Water Act, the Endangered Species Act, the Internal Revenue Code, or other economic regulations. There is no persuasive reason to treat cannabis differently.

Perhaps, there would be a justification for treating marijuana differently if it were a legitimate therapeutic substitute for opioids. Unfortunately, however, cannabis cannot serve as a palliative for acute or chronic pain, nor can it be used as an adjunctive treatment of either malady, certainly not in a smokable form. (Indeed, for 50-plus years the nation has tried to persuade people

³ My submission here summarizes the views that I set forth in Paul J. Larkin, Jr. & Bertha K. Madras, *Opioids, Overdoses, and Cannabis: Is Marijuana an Effective Therapeutic Response to the Opioid Abuse Epidemic?*, 17 GEO. J.L. & PUB. POL’Y (forthcoming 2019), and Paul J. Larkin, Jr., *States’ Rights and Federal Wrongs: The Misguided Attempt to Label Marijuana Legalization Efforts as a “States’ Rights” Issue*, 16 GEO. J.L. & PUB. POL’Y 495 (2018).

⁴ See Paul J. Larkin, Jr., *Marijuana Edibles and “Gummy Bears,”* 66 BUFFALO L. REV. 313, 322-28 (2018) [hereafter Larkin, *Gummy Bears*]; Paul J. Larkin, Jr., *Introduction to a Debate—“Marijuana: Legalize, Decriminalize, or Leave the Status Quo in Place?”*, 23 BERKELEY J. CRIM. L. 73 (2018) (both summarizing the debate).

⁵ H.R. 2093, the Strengthening the Tenth Amendment Through Entrusting States Act (or STATES Act), 116th Cong. (2019).

⁶ See U.S. CONST. art. VI, cl. 2 (“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”).

not to smoke.) If anything, marijuana use worsens the problems besetting people who are physically dependent on, or addicted to, opioids.⁷ Yet, in the debate over legalizing medical or recreational marijuana use, opponents of current federal law assume without explaining that the Controlled Substances Act and marijuana are different.

One consequence of allowing the states to pre-empt federal law would be to empower them to overrule the judgments of federal officials as to the medical value of smoking marijuana. We do not, however, make scientific decisions today in the same manner that numerous states have adopted medical marijuana schemes: by plebiscite. Federal law has flatly or effectively prohibited the cultivation, processing, and distribution of marijuana since the Marijuana Tax Act of 1937. That date is significant because the following year Congress passed the Federal Food, Drug, and Cosmetics Act of 1938 (FDCA). The FDCA prohibited the distribution in interstate commerce of “adulterated” foods and drugs. That law also empowered and directed the Commissioner of Food and Drugs to examine both products to be sure that they were safe for interstate distribution. In 1962, Congress also prohibited the distribution of new drugs unless and until the Commissioner has found that they are not only “safe,” but also “effective.” Congress has reaffirmed that judgment on numerous occasions since 1962. Americans have entrusted the decision whether a particular new drug can be sold throughout the nation to experts at the Food and Drug Administration (FDA).

Some cannabinoids have a known therapeutic value, and there may be medicinal potential in others as yet unexamined. We should continue to conduct research into the potential benefits of cannabinoids and should remove any arbitrary or unreasonable roadblocks standing in the way of legitimate research. But that research should be subject to review and approval by the FDA, not by the voters in each state or subdivision. We have not pursued that course for the past 80 years, and there is no good reason to start now.

States that have legalized marijuana to be smoked for medical purposes have simply taken the law into their own hands. Perhaps, they did so in order to “nudge” Congress to reconsider the treatment of marijuana in Title 21. Even if that were the motivation for the state medical marijuana programs, there still is no good reason to hand that judgment off to the states. Congress should have reconciled the Marijuana Tax Act of 1937 and the FDCA of 1938 long before now by directing the FDA Commissioner to decide whether and, if so, when and how marijuana can be used therapeutically. Punting the ball to the states just abdicates a responsibility that Congress should have forthrightly assumed decades ago.

An argument in favor of allowing states to experiment with marijuana regulation, whether for medical or recreational use, draws on the famous metaphor penned by U.S. Supreme Court Justice Louis Brandeis. The argument is that we should allow the states to serve as “laborator[ies]” to “try out novel social and economic experiments without risk to the rest of the country.”⁸ That

⁷ See, e.g., Gabrielle Campbell et al., *Effect of Cannabis Used in People with Chronic Non-Cancer Pain Prescribed Opioids: Findings from a 4-year Prospective Cohort Study*, 3 LANCET PUB. HEALTH e341 (2018); Theodore L. Caputi & Keith Humphreys, *Medical Marijuana Users Are More Likely to Use Prescription Drugs Medically and Nonmedically*, 12 J. ADDICTION MED. 295 (2018); Larkin, Jr. & Madras, *supra* note 3; Mark Olfson et al., *Medical Marijuana and the Opioid Epidemic: Response to Theriault and Schlesinger*, 175 AM. J. PSYCHIATRY 284 (2018); Chelsea L. Shover et al., *Association between Medical Cannabis Laws and Opioid Overdose Mortality Has Reversed over Time*, PNAS, June 10, 2019, <https://www.pnas.org/content/pnas/early/2019/06/04/1903434116.full.pdf>.

⁸ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

argument is a reasonable one in many contexts, but this is not one of them. After all, “Dr. Frankenstein also had a laboratory.”⁹ With respect to the medical use of drugs, America has followed one course for eight decades. Throwing away that approach just for marijuana is not only unstable—because states or localities will push for exemptions for other drugs—it is likely to injure the public.

To be sure, the STATES Act would not expressly amend the FDCA, so the FDA would continue to possess sole authority to decide what drugs should be distributed in interstate commerce for medical purposes—that is, what drugs are safe and effective. But the creation of an exemption for state medical marijuana programs from related provisions of Title 21 gives legitimacy to the long discredited notion that states should have authority to decide whether drugs are safe and effective. Such a program also would needlessly give rise to controversy and litigation over whether the new federal law impliedly exempts state medical marijuana programs from FDA governance. Besides, if Congress modifies Title 21 to exempt state *recreational* marijuana programs from federal law, there is no reason to address the status of state *medical* marijuana programs at all. Anyone who wants to use marijuana for medical purposes can purchase it in any state with a recreational marijuana program. The feature of the STATES Act that refers to state medical marijuana programs may provide political cover, but it would be of no substantive use.¹⁰

II. THE RELEVANT QUESTION IS WHETHER CONGRESS SHOULD REVISE TITLE 21 TO PERMIT MARIJUANA TO BE POSSESSED, SOLD, AND USED FOR RECREATIONAL PURPOSES¹¹

Gaul might have been divided into three parts, but marijuana needs only two: medical use and recreational use. The former category, however, is a ruse invented to disguise recreational use. The latter category poses serious questions that demand consideration of the benefits and costs of legalizing a commodity that has minimal benefits and some potentially serious costs.¹²

⁹ Mark A.R. Kleiman, *How Not to Make a Hash Out of Cannabis Legalization*, WASH. MONTHLY, Mar.-May 2014, <https://washingtonmonthly.com/magazine/marchaprilmay-2014/how-not-to-make-a-hash-out-of-cannabis-legalization/>. As noted below, Professor Kleiman favors controlled and regulated marijuana legalization. In his 2014 article, he supported public ownership of distribution facilities.

¹⁰ There is one related point to consider here. State marijuana legalization programs risk interfering with the nation’s diplomatic policy, a field that the Constitution expressly forbids the states from regulating. The United States is a signatory to three international agreements requiring participating nations to outlaw the distribution of various controlled substances, such as marijuana. Congress has the authority to prohibit the cultivation and distribution of marijuana in furtherance of its treaty obligations, and the states cannot disrupt federal policy through their own domestic legislation. Yet, that is the effect of the new state marijuana laws. They put the United States at risk of giving the international community the impression that this nation no longer is interested in upholding its commitments to treat cannabis as contraband. Here, as elsewhere, the federal government is entitled to see the value in believing that “a promise is really something people kept, not just something they would say and then forget.” The Judds, *Grandpa (Tell Me 'Bout the Good Ol' Days)* (1986). Because the state initiatives permitting private parties to grow or distribute marijuana could adversely affect the judgment of the world community regarding the reliability of the United States as a party to international agreements, those initiatives are invalid under federal law. Atop that, it would be unwise for Congress to bless the states’ effort to trespass on an exclusively federal responsibility. That is not behavior the federal government should encourage the states to repeat.

¹¹ My submission here summarizes the views that I set forth in Larkin, *Gummy Bears*, *supra* note 4, and Paul J. Larkin, Jr., *The Medical Marijuana Delusion*, PENN. REGULATORY REV. (Dec. 17, 2018).

¹² For a summary of the benefits and costs of the status quo versus legalization, see Mark A.R. Kleiman, *The Public-Health Case for Legalizing Marijuana*, 39 NAT’L AFFAIRS 68 (Spring 2019); see also *infra* note 32.

A. MEDICAL MARIJUANA IS A HOBGOBLIN

People have practiced rudimentary forms of medicine for millennia. They used whatever plants were handy, or ancestors had found useful, in the hope of curing illness or obtaining relief from its misery. Cannabis is one of those plants; archaeological evidence shows that people used it more than 10,000 years ago. Some argue, therefore, that we should allow private parties to use marijuana as a natural treatment for pain, anxiety, and other disorders. Contemporary medicine, however, does not rely on home grown, herbal folk remedies to cure disease, for a host of reasons.

Until the twentieth century, it was common for pharmacists to prepare, and physicians to administer nostrums created from complex natural plants, such as marijuana. But not today. So that a physician knows exactly what medications to prescribe for a patient, contemporary pharmacology requires that prescription and over-the-counter medications have standard ingredients, formulations, and potency. Marijuana does not. It contains hundreds of chemicals, and its features can vary by strain, breeding, region and process of cultivation, storage time, and so forth. Consider its psychoactive component— Δ^9 tetrahydrocannabinol or THC. Cannabis had approximately a 3-4 percent THC content from the 1960s through the 1980s, but today can be 12-20 percent in the plant form or in hashish (dried cannabis resin and crushed plants), with hash oil (an oil-based extract of hashish) having an even greater THC content (15-50 percent), and other formulations in the 90 percent range. The FDA could never approve a drug to be used without knowing its potency.

Moreover, there is no standard “dosage” for smoked marijuana, unlike manufactured pharmaceuticals. The latter have an active ingredient specified in milligrams, and the usage directions, which by law must appear on the package’s label, state precisely how many pills (for example) should be taken and when. There are no comparable uniform measurements or standards regarding the amount of smoked marijuana’s components, or directions for use. There also is no standard number of inhalations, no standard depth of an inhalation, and no standard length of one. Accordingly, a physician cannot precisely know how much of those constituents someone receives. And that does not even begin to address the problem caused by the presence of toxins, such as pesticides, fungi, mold, lead, formaldehyde and other substances that can and have contaminated commercial marijuana and that are forbidden in commercial pharmaceuticals.

In sum, the rudimentary features of a drug required by modern pharmacology—and demanded by federal law—to be deemed a medicine are critically important for a physician to know when treating a patient. The smokable form of marijuana does not qualify.

B. RECREATIONAL MARIJUANA IS A CONUNDRUM

Once the ruse of medical marijuana is put aside, we come to the real issue: Should Congress legalize the recreational use of marijuana? This question is a difficult one. There are a number of factors that Congress should consider.

1. American society permits alcohol and tobacco to be sold to adults, both can lead to severe individual and widespread societal harms, and there is no serious movement afoot to outlaw either product on a nationwide basis. Regulation, not a flat ban, is the approach that the nation follows in that regard. *As for alcohol*: The Constitution leaves to the states the issue whether—and, if so, how—to permit the distribution of alcohol.¹³ There is very little room for Congress to

¹³ U.S. CONST. amend. XXI, § 2.

regulate alcohol distribution¹⁴ even though it is responsible for numerous, severe harms.¹⁵ *As for tobacco:* For years, Congress did not fully address the issue whether the federal government should regulate the manufacture and sale of tobacco products, particularly cigarettes.¹⁶ In 2009, Congress decided to change its stance. It passed the Family Smoking Prevention and Tobacco Control Act.¹⁷ That law authorizes the Commissioner of Food and Drugs to regulate the distribution of tobacco products. Perhaps, that approach would be a sensible one in the case of marijuana. What does not appear sensible, however, is the notion that Congress should hand over this issue to the states. It is difficult to understand why the federal government should allow tobacco to be sold only under federal regulation, but to authorize the states to have complete control over marijuana.

2. Long-term use of marijuana can lead some users to become dependent on, if not addicted to, marijuana. Long-term use can also lead some people to suffer serious mental disorders, such as psychosis. Of course, not everyone who uses marijuana will suffer either fate, but we cannot discern in advance which individuals will be unlucky.¹⁸

3. Legalization of adult recreational marijuana use will inevitably lead to greater access to and use of marijuana by minors. That is a particular problem when THC is added to edible products.

4. As discussed in Part II below, legalizing recreational marijuana use will increase the number of roadway accidents attributable to cannabis use. All that in order to legalize use of a drug that will not save lives and that, on the contrary, in some cases will have the opposite effect.

The questions for Congress are similar to the ones that first-year law students learn in torts class. What are the potential harms from permitting recreational marijuana use? What are the potential benefits? What is the likelihood and extent of each? What preventative measures can avoid the harms while not interfering with the benefits? What is the cost of those measures? What is the likelihood of error of making each of those judgments? Should Congress take or avoid the risks of prohibition versus legalization? And can a mistaken judgment be remedied at a reasonable cost?

¹⁴ There might be some room. See *Granholm v. Heald*, U.S. 544 U.S. 460 (2005) (ruling that, notwithstanding the Twenty-First Amendment, a state law regulating the interstate sale of alcoholic beverages can violate the Commerce Clause, U.S. Const. art. I, § 8, cl. 3). But there isn't much.

¹⁵ See, e.g., Paul J. Larkin, Jr., *Swift, Certain, and Fair Punishment—24/7 Sobriety and HOPE: Creative Approaches to Alcohol- and Illicit Drug-Using Offenders*, 105 J. OF CRIM. L. & CRIMINOLOGY 39, 42-43 (2016) (“Alcohol has a long history of use in western civilization, and it is widely consumed in America today. Alcohol abuse, however, has been with us as long as alcohol itself. Most people can consume alcohol in moderation or intermittently without suffering any adverse long-term effect. But not all. Some individuals become dependent on alcohol, and years of overuse not only seriously impairs their health but also can prove fatal. Excessive alcohol consumption today imposes more than \$200 billion on the nation each year in morbidity and mortality costs, as well as various other direct and collateral costs, expenses that dwarf tax revenues from alcohol sales. Alcohol also may be the most commonly used intoxicant by individuals who break the criminal laws.”) (footnotes omitted) [hereafter Larkin, *24/7 Sobriety*].

¹⁶ See, e.g., *FDA v. Brown & Williamson Tobacco Co.*, 529 U.S. 120 (2000); *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1186-91 (11th Cir. 2017) (en banc) (both discussing congressional regulation of tobacco).

¹⁷ Pub. L. No. 111-31, 123 Stat. 1776 (2009).

¹⁸ For a layman's explanation of why the discussion in the text is so, see ALEX BERENSON, *TELL YOUR CHILDREN: THE TRUTH ABOUT MARIJUANA, MENTAL ILLNESS, AND VIOLENCE* (2019). See also Larkin, *Gummy Bears*, *supra* note 4, at 323-36 & nn.28-53 (collecting scientific studies and reports).

The question is whether to revise federal law, so it is Congress's duty to debate and answer those questions. Deciding to "let this cup pass from me"¹⁹ is not a responsible course. Whether the recreational benefits of marijuana use outweigh its harms is precisely the discussion that Congress should have, not whether there is some particular benefit for small businesses.

III. CONGRESS SHOULD ACT TO AMELIORATE THE INJURIES AND DEATHS THAT WILL RESULT FROM CRASHES CAUSED BY PEOPLE WHO CONSUME MARIJUANA AND DRIVE²⁰

If Congress were to decide to legalize recreational use marijuana, Congress should address the inevitable harmful sequelae of that decision. One of them would be an increase in roadway crashes, injuries, and fatalities caused by a larger number of people who use marijuana and drive. For decades now, the nation has sought to lower the carnage caused by people who "have had one too many" and drive. Generally, public and private efforts to stop drinking and driving have successfully driven down the number of alcohol-caused crashes. Legalizing marijuana for recreational use will lead to an about-face in that effort. There will be an increase in marijuana use, some of those users will decide to get behind the wheel, and some drivers who are "one toke over the line" will injure or kill innocent passengers, pedestrians, or other drivers. Legalizing marijuana use without also acting to ameliorate that problem would be irresponsible.

A. THE PROBLEM OF MARIJUANA-IMPAIRED DRIVING

The primary psychoactive ingredient in marijuana— Δ^9 tetrahydrocannabinol (THC)—hampers a driver's ability to quickly and effectively process and respond to unexpected or rapidly changing driving scenarios. In fact, other than alcohol, marijuana is currently the biggest problem drug for roadway safety—not because it is more impairing than drugs like heroin, but because it is more commonly used, a use that is increasing rapidly. More than 30 states now permit adults to use cannabis for medical or recreational purposes. Those states might expand their current lawful uses. Other states are likely to consider joining them.

If marijuana-impaired driving alone were not a serious enough public health hazard, consider this: A large number of people combine marijuana with alcohol, which only worsens impairment. That combination is particularly common (perhaps increasingly so, given marijuana legalization) and especially troublesome given the additive or synergistic debilitating effect that such a cocktail has on safe motor vehicle handling. Someone with a blood alcohol content (BAC) level below 0.08 but who is also under the influence of marijuana would not be deemed impaired as a matter of law, but very well might be more incapacitated than someone with a BAC level

¹⁹ Matthew 26:39 (KJV).

²⁰ My submission here summarizes the views that I set forth in Paul J. Larkin, Jr., *The Problem of "Driving While Stoned" Demands an Aggressive Public Policy Response*, 11 J. DRUG POL'Y ANALYSIS Issue 2 (2018) [hereafter Larkin, *The Problem of "Driving While Stoned"*]; Paul J. Larkin, Jr., *Medical or Recreational Marijuana and Drugged Driving*, 52 AM. CRIM. L. REV. 453 (2015) [hereafter Larkin, *Drugged Driving*]; and Paul J. Larkin, Jr., Robert L. DuPont & Bertha K. Madras, *The Need to Treat Driving under the Influence of Drugs as Seriously as Driving under the Influence of Alcohol*, THE HERITAGE FOUND., BACKGROUNDER No. 3316 (May 16, 2018), https://www.heritage.org/sites/default/files/2018-05/BG3316_1.pdf. For competing views, see Mark A.R. Kleiman et al., *Driving While Stoned: Issues and Policy Options*, 11 J. DRUG POL'Y ANALYSIS Issue 2 (2018) (arguing that stoned driving is a minor risk and should be treated as a traffic offense on a par with speeding). The two *Journal of Drug Policy Analysis* articles cited above are best read together.

above the limit. That aggravates our impaired-driving problem, because, given today's technology, we cannot use the same approach to measure THC impairment that we use for alcohol.

There is reason to be concerned that more widespread and greater use of marijuana will lead to an increase in fatal and non-fatal motor vehicle crashes. The evidence collected so far might not be conclusive, because there is evidence going both ways. Every state with a medical or recreational marijuana scheme certainly should collect data regarding the effect of any such program on highway safety. What we know so far, however, is very troubling.

Consider the data from Colorado since that state enacted a recreational marijuana initiative in 2012. According to a September 2018 report by the Strategic Intelligence Unit of the Rocky Mountain High Intensity Drug Trafficking Area (HIDTA) Task Force, since 2012 traffic deaths involving drivers who tested positive for marijuana have increased by 35 percent, while the number of marijuana-related fatalities jumped 151 percent from 55 in 2013 to 138 in 2017. In 2017, 76 of the 112 drivers involved in fatal wrecks tested positive for THC, not an inactive cannabis metabolite, in their blood—and therefore in their brain—which indicates marijuana use within hours preceding the crash. The 2017 number translates to one person killed every 2.5 days. Earlier HIDTA Task Force Reports, as well as publications by other organizations, also found similar results.

Those sad facts are not surprising when one considers the following. An anonymous November 2017 Colorado Department of Transportation survey concluded that 69 percent of respondents admitted to driving while “high” from marijuana within the prior year, 55 percent said that driving under the influence of marijuana was safe, and 55 percent of that group said that they had driven while high an average of 12 times in the prior 30 days. The one word that best describes those results is “scary.” Finally, there is evidence that this problem might last longer than the average person expects. One study found that chronic daily marijuana users still suffered from impairment three weeks into abstinence, past the point at which the average person might think himself free of THC's disabling effect.

One final point in this regard. Legalizing any psychoactive substance puts innocent parties at risk of grave bodily injury or death if they drive because some other drivers might be impaired by any such substance. That is a critical factor to consider. As I have explained elsewhere:

Like the debate over marijuana legalization, the challenge to the constitutionality and morality of capital punishment has been the subject of vigorous dispute for the last several decades. One of the most common and powerful arguments advanced against the death penalty is that the criminal justice system is so riddled with flaws that there is an unacceptable risk that an innocent person will be executed. In any event, the argument goes, the difference between who lives and dies is entirely arbitrary.

Ironically, the adoption of medical and recreational marijuana schemes poses the same risk of killing the innocent. Yet, we do not see any discussion of this cost of reform of the nation's marijuana laws, let alone any outcry against liberalization that it will cost innocent lives. It is time that we should.

There should be little doubt that the existence of medical and recreational marijuana schemes increases the risk of highway morbidity and mortality. Logic compels that conclusion. Eliminating criminal penalties for marijuana possession

and use will entice some new number of people to use marijuana who avoided it because it had been a crime. Some number of those people will drive after becoming impaired. In turn, some number of those people will contribute to an accident, perhaps one involving a fatality. It certainly is the case that a legislature could decide that marijuana liberalization will lead to an increase in marijuana use and therefore decide to allocate any burden on the party—the marijuana user—who increases the risk of morbidity and mortality to deter people from using marijuana and driving.

* * * * *

The result is this: adoption of medical and recreational marijuana initiatives poses the risk of killing entirely innocent parties, whether they are other motorists, passengers, or pedestrians, in a purely random manner. Those people are no less innocent, and no less dead, than the hypothetical individual who is wrongfully convicted of a capital crime and executed. That omission deserves especial blame in the case of increased *recreational* use of marijuana. Whatever benefit marijuana may offer the people who smoke it, it cannot save lives. It can, however, take them.²¹

The bottom line is that the problem of marijuana-impaired driving is a serious one.

B. REMEDIES FOR THE PROBLEM OF DRUG-IMPAIRED DRIVING

The STATES Act at least recognizes that problem. Section 5 of that bill would direct the Comptroller General to complete within one year a study into “the effects of marijuana legalization on traffic safety.” Such an investigation might be valuable, but it is insufficient. Congress can direct the Comptroller General to conduct that investigation *today*, without waiting for passage of the STATES Act. Moreover, the problem is not attributable to marijuana alone. Other drugs, such as opioids and benzodiazepines (minor tranquilizers), can impair someone’s ability to drive a motor vehicle safely.

Numerous other parties are aware of this problem, have studied it, and have sought to develop responses to it. The National Highway Traffic Safety Administration of the Department of Transportation; the Office of National Drug Control Policy; the Governors’ Highway Safety Association; numerous private organizations such as the American Automobile Association, the Institute for Behavior and Health, and the Insurance Institute for Highway Safety—those and other public and private entities are troubled by drug-impaired driving and are working to minimize its harmful consequences. I am confident that all of those entities would be willing to continue to work *today* with Congress in any such inquiry that Congress would direct.

There is far more that Congress can do today to address this problem. Congress appropriates funds for interstate highway construction, and it can place reasonable conditions on the receipt of those funds.²² Below is a list of reasonable policies that would help address the problem of

²¹ Larkin, *The Problem of “Driving While Stoned,”* *supra* note 20, at 5 (emphasis in original). I realize that legislators regularly make decisions with life-or-death consequences. See Ronald J. Allen & Amy Shavell, *Further Reflections on the Guillotine*, 95 J. CRIM. L. & CRIMINOLOGY 625 (2005); Paul J. Larkin, Jr., *The Demise of Capital Clemency*, 73 WASH. & LEE L. REV. 1295, 1317-18 (2016). My point is that the decision to legalize marijuana for recreational use fits into that category, not that it is unique.

²² See *South Dakota v. Dole*, 482 U.S. 203 (1987) (holding that Congress has the Article I authority to condition receipt of a small portion of federal highway funds on the adoption of a minimum drinking age).

drug-impaired driving. Congress has the power to require every state with medical or recreational marijuana programs to adopt these proposals as a condition of the continued receipt of federal highway monies.

- **Proposal:** Apply to every driver under age 21 who tests positive for any illicit or impairing drug, including marijuana and impairing prescription drugs, the same zero-tolerance standard specified for alcohol, the use of which in this age group is illegal.
- **Proposal:** Apply to every driver found to have been impaired by drugs, including marijuana, the same remedies and penalties that are specified for alcohol-impaired drivers, including administrative or judicial license revocation.
- **Proposal:** Test every driver involved in a crash that results in a fatality or a serious injury (including injury to pedestrians) for alcohol and impairing drugs, including marijuana, a panel of opioids, and prescription drugs.
- **Proposal:** Test every driver involved in a crash involving a fatality or serious injury for marijuana in every state with medical or recreational marijuana laws.
- **Proposal:** Test every driver arrested for driving while impaired for both alcohol and impairing drugs, including marijuana.
- **Proposal:** Require federal, state, and local law enforcement officers to use reliable oral fluid testing technology at the roadside for every driver arrested for impaired driving.
- **Proposal:** Authorize the creation of a national database similar to the National Crime Information Center that collects the information for DWI program and policy decisions and that is accessible by state and local law enforcement officers.
- **Proposal:** Require states to collect/collate/publish alcohol/drug/polydrug data.
- **Proposal:** Require every state with medical or recreational marijuana laws to collect data on all crashes in which marijuana is suspected to have contributed to the crash and report that data to NHTSA.
- **Proposal:** Require every state to inform all people applying for a driver's license and renewing a past license of all prescription drugs that can impair driving, as well as all illicit drugs.
- **Proposal:** Implement 24/7 Sobriety Programs in every area subject to federal jurisdiction.²³
- **Proposal:** Require that DWI recordkeeping separately classify alcohol, drugs, and polydrug use.
- **Proposal:** Lower the Blood-Alcohol Content Threshold from 0.08 g/dL to 0.05 (or lower) in every state that has authorized marijuana to be used for medical or recreational purposes.

Polydrug use is sufficiently common today that the states should test every driver involved in a crash, particularly one involving a fatality, not only for alcohol but also for legal and illegal impairing drugs. Moreover, all 50 states fix 21 as the minimum drinking age *and* the minimum age for recreational marijuana use. It therefore makes sense that states should apply to everyone under that age who tests positive for any illegal drug use whatever administrative penalty the states impose for underage drinking and driving. Colorado and Washington have attempted to collect and report the data reflecting the consequences of the legalization schemes in those states. Other states should do the same, and Congress can require them to do so as a condition of receiving federal highway funds. That is particularly important in the case of marijuana legalization, because of the dramatic changes that we have seen since California first legalized medical marijuana in

²³ For a discussion of 24/7 Sobriety programs, see Larkin, *24/7 Sobriety*, *supra* note 15.

1996. Where a state has changed its laws to allow marijuana to be used for medical or recreational purposes, that state has an obligation to its residents—and anyone else who uses the state’s roadways—to inform the public whether liberalization has increased the risk of grave bodily injury or death whenever they drive.

I previously have argued that states with medical or recreational marijuana programs should lower the BAC standard for alcohol.²⁴ That approach would not address the risk that marijuana use alone poses to highway injury or death, but it could help lessen the number of crashes caused by a marijuana-alcohol cocktail. I continue to believe that we should not let the perfect be the enemy of the good and that saving some lives is better than saving none. I am aware of the powerful opposition that the national alcoholic beverage industry and local drinking establishments would bring to bear against any such proposal. Yet, I do not believe that trying to keep some impaired drivers off the road by lowering the BAC level for alcohol is just tilting at windmills. At a minimum, forcing opponents of this option to justify their position would enhance the public discourse over drug-impaired driving, because there is value in forcing someone to articulate an unpersuasive argument.

III. IF CONGRESS DECIDES TO LEGALIZE RECREATIONAL MARIJUANA USE, IT SHOULD REQUIRE STATES TO OWN AND OPERATE MARIJUANA DISTRIBUTION FACILITIES

Marijuana legalization is not “a binary choice,” with complete legalization and a heavy criminal justice crackdown as the only two options.²⁵ There are points in between. That debate also misses the boat because it focuses on the *demand* side of the matter. An important aspect of this issue is the *supply* side: who may cultivate, possess, and distribute agricultural marijuana.²⁶ Even here there are multiple options. For example, one option is reducing criminal penalties for growing and possessing a limited amount of marijuana in one’s home for personal use. Moreover, even for commercial distribution, the debate so far has largely focused on the choice between large- and small-scale commercial businesses. That is a mistake. Private ownership of commercial facilities is not the only option. There are at least two others that should be discussed: namely, limiting production and distribution to businesses in a not-for-profit industry or limiting them to state-owned operations.

Two experts on the subject of marijuana have endorsed alternatives to large- or small-scale private ownership of distribution businesses. In a 2018 article entitled *Against a Weed Industry*, Jonathan Caulkins, a professor at Carnegie-Mellon University, recommended a not-for-profit model.²⁷ By contrast, in a 2014 article entitled *How Not to Make a Hash Out of Cannabis Legalization*, NYU Professor Mark Kleiman argued in favor of state ownership of marijuana stores.²⁸

²⁴ See Larkin, *The Problem of “Driving While Stoned,”* *supra* note 20; Larkin, *Drugged Driving*, *supra* note 20.

²⁵ Jonathan Caulkins, *Against a Weed Industry*, NAT’L REV., Mar. 15, 2018, <https://www.nationalreview.com/magazine/2018/04/02/legal-marijuana-industry-leap-unknown/>. Unless otherwise noted, quotations that follow in Part III come from Professor Caulkins’ article.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Kleiman, *supra* note 9.

Either option is better than recreating the same ownership and distribution system that we have today for cigarettes, but I think that Professor Kleiman has the better of the argument.

A. OPTION 1: LARGE-SCALE FOR-PROFIT OWNERSHIP OF MARIJUANA DISTRIBUTION

Professors Caulkins and Kleiman make a powerful case for avoiding a scheme involving the distribution of marijuana by privately owned for-profit companies, especially large corporations. As Professors Caulkins explains, “Free-market capitalism unleashes awesome forces. The quest for ever greater profits stimulates innovation in products and production processes, yielding a wider range of cheaper and more effective products in which consumers can indulge—and sometimes over-indulge.”²⁹ That outcome is “a blessing in the case of 99 percent of products, but not all of them. We do not allow corporations to sell human organs, sexual favors, or performance-enhancing steroids for non-medical use, and some harbor misgivings about for-profit prisons and universities.”³⁰

Professor Caulkins argues that “this cautious approach” is necessary because cannabis is not “a regular article of commerce.”³¹ It is quite unlike ordinary commercial products, like automobiles, flashlights, telephones, and the like. It is far closer to items such as alcohol and tobacco. Why? For several reasons, such as the ones that I mentioned above: It has the potential to render users dependent on or addicted to the drug; it can lead to severe mental health problems; it can create havoc on the roadways; and so forth—all of which can wind up creating major problems for a significant proportion of the population.³² “The trick to legalizing marijuana, then,” Professor Kleiman put it, “is to keep at bay the logic of the market—its tendency to create and exploit people with substance abuse disorders.”³³

The reason is that different people will consume marijuana in different ways and in different amounts. Moderate use of marijuana by adults at home is not likely to lead to major health or

²⁹ Caulkins, *supra* note 25.

³⁰ *Id.*

³¹ *Id.*

³² Marijuana is not as severe a threat to individual and public health as alcohol, he notes. *Id.* (“Cannabis is a dependence-inducing intoxicant, but a relatively safe one. Overdoses—particularly from edibles—prompt many thousands of people to seek care in emergency rooms every year, but overdose deaths are all but impossible. Even long-term use doesn’t cause much organ damage. Yes, cannabis smoke contains carcinogens, but not enough to make excess cancers visible in epidemiological studies. Cannabis intoxication impairs reaction time, memory, and one’s ability to perform tasks that require attention, but it does not produce reckless or aggressive behavior the way alcohol does.”). But it is not a harmless product. *Id.*; see also Kleiman, *supra* note 9 (“The undeniable gains from legalization consist mostly of getting rid of the damage done by prohibition. . . . Another gain from legalization would be to move the millions of Americans whose crimes begin and end with using illegal cannabis from the wrong side of the law to the right one, bringing an array of benefits to them and their communities in the form of a healthier relationship with the legal and political systems. Current cannabis users, and the millions of others who might choose to start using cannabis if the drug became legal, would also enjoy an increase in personal liberty and be able to pursue, without the fear of legal consequences, what is for most of them a harmless source of pleasure, comfort, relaxation, sociability, healing, creativity, or inspiration. For those people, legalization would also bring with it all the ordinary gains consumers derive from open competition: lower prices, easier access, and a wider range of available products and means of administration, held to quality standards the illicit market can’t enforce.”).

³³ Kleiman, *supra* note 9

societal problems. “Adults’ using a few times a week when not at work, school, or minding children is pretty harmless, and that describes almost half of cannabis users.”³⁴ But that practice “describes only a tiny share of cannabis use.”³⁵ As he explained, “Such moderate, adult use is engaged in by about one in three cannabis users, but accounts for only 2 percent of consumption and so a trifling share of sales and profits.”³⁶ A far smaller number of daily or dependent users consume far more marijuana person. “[D]aily and near-daily users who account for about 80 percent of consumption. As policy liberalized, cannabis transformed from a weekend party drug to a daily habit, becoming more like tobacco smoking and less like drinking. The number of Americans who self-report using cannabis daily or near-daily grew from 0.9 million in 1992 to 7.9 million in 2016.”³⁷

If you think that’s bad, hold on. It gets worse.

“Just under half of consumption is by people who report either having been in alcohol or drug treatment or suffering enough current problems to meet medical criteria for substance-use disorder. (Since denial is a hallmark of addiction, this proportion is likely conservative.)”³⁸ Moreover, “[a]bout 60 percent of consumption is by people with a high-school education or less, a group with lower disposable income and greater sensitivity to falling prices.”³⁹ And prices have declined—“sharply.”⁴⁰ The result is that legalization will create serious problems for an unknown—albeit hopefully small—number of Americans.

Professor Kleiman voiced the same concerns:

The losses from legalization would mainly accrue to the minority of consumers who lose control of their cannabis use. About a quarter of the sixteen million Americans who report having used cannabis in the past month say they used it every day or almost every day. Those frequent users also use more cannabis per day of use than do less frequent users. About half of the daily- and near-daily-use population meets diagnostic criteria for substance abuse or dependence—that is, they find that their cannabis habit is interfering with other activities and bringing negative consequences, and that their attempts to cut back on the frequency or quantity of their cannabis use have failed. (Those estimates are based on users’ own responses to surveys, so they probably underestimate the actual risks.)

³⁴ Caulkins, *supra* note 25.

³⁵ *Id.* (emphasis in original).

³⁶ *Id.* (“Likewise, many kids use, but most do not use daily, and there are some adults who use ten to 20 times per month.”).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Product variety has also increased. *Id.* (“Product variety has exploded, including THC-infused candies and edibles, oils that can be vaped (akin to e-cigarettes), and chunks of 70-plus percent THC that are suitable for flash-vaporization (“dabbing”). The increase in average daily dose has been startling. Until 2000, the average potency of seized cannabis never exceeded 5 percent, and 4 percent was typical. Someone consuming one 0.4-gram joint each weekend night was consuming 0.032 grams of THC per week, or 4.6 milligrams per day. Daily users now average about 1.3 grams per day. At 20 percent potency, that is 260 milligrams per day—nearly 60 times as much.”).

And then, of course, there are the extreme cases. A substantial number of these daily users spend virtually every waking hour under the influence. Legal availability is likely to add both to their numbers and to the intensity of their problems.⁴¹

Put differently,

Cannabis consumption, like alcohol consumption, follows the so-called 80/20 rule (sometimes called “Pareto’s Law”): 20 percent of the users account for 80 percent of the volume. So from the perspective of cannabis vendors, drug abuse isn’t the problem; it’s the target demographic. Since we can expect the legal cannabis industry to be financially dependent on dependent consumers, we can also expect that the industry’s marketing practices and lobbying agenda will be dedicated to creating and sustaining problem drug use patterns.”⁴²

Using a purely private distribution system is part of the problem. As Professor Kleiman estimated in 2014:

The systems being put into place in Washington and Colorado roughly resemble those imposed on alcohol after Prohibition ended in 1933. A set of competitive commercial enterprises produce the pot, and a set of competitive commercial enterprises sell it, under modest regulations: a limited number of licenses, no direct sales to minors, no marketing obviously directed at minors, purity/potency testing and labeling security rules. The post-Prohibition restrictions on alcohol worked reasonably well for a while, but have been substantially undermined over the years as the beer and liquor industries consolidated and used their economies of scale to lower production costs and their lobbying muscle to loosen regulations and keep taxes low

The same will likely happen with cannabis. As more and more states begin to legalize marijuana over the next few years, the cannabis industry will begin to get richer—and that means it will start to wield considerably more political power, not only over the states but over national policy, too.

That’s how we could get locked into a bad system in which the primary downside of legalizing pot—increased drug abuse, especially by minors—will be greater than it needs to be, and the benefits, including tax revenues, smaller than they could be. It’s easy to imagine the cannabis equivalent of an Anheuser-Busch InBev peddling low-cost, high-octane cannabis in Super Bowl commercials. We can do better than that, but only if Congress takes action—and soon.⁴³

B. OPTION 2: NOT-FOR PROFIT VS. STATE OWNERSHIP OF MARIJUANA DISTRIBUTION

To avoid those problems, Professor Caulkins proposes that Congress use a ten-year period to study the effects of a radical change in our controlled substances laws. In his words:

⁴¹ Kleiman, *supra* note 9.

⁴² *Id.*

⁴³ *Id.*

I suggest that we pause for a decade and restrict legal supply to nonprofit organizations. One option would require organizations applying for a state license to be nonprofit groups whose governance structures focus them on serving the public interest. I suggest two conditions. First, the majority of governing-board members must come from the child-welfare and treatment communities. Second, the organization's charter must define its mission as meeting existing demand, in order to undercut the black market, but not promoting greater consumption.⁴⁴

In 2014, Professor Kleiman argued in favor of a government distribution mechanism:

What's needed is federal legislation requiring states that legalize cannabis to structure their pot markets such that they won't get captured by commercial interests. There are any number of ways to do that, so the legislation wouldn't have to be overly prescriptive. States could, for instance, allow marijuana to be sold only through nonprofit outlets, or distributed via small consumer-owned co-ops (see Jonathan P. Caulkins, "Nonprofit Motive"). The most effective way, however, would be through a system of state-run retail stores.

There's plenty of precedent for this: states from Utah to Pennsylvania to Alabama restrict hard liquor sales to state-operated or state-controlled outlets. Such "ABC" ("alcoholic beverage control") stores date back to the end of Prohibition, and operationally they work fine. Similar "pot control" stores could work fine for marijuana, too. A "state store" system would also allow the states to control the pot supply chain. By contracting with many small growers, rather than a few giant ones, states could check the industry's political power (concentrated industries are almost always more effective at lobbying than those comprised of many small companies) and maintain consumer choice by avoiding a beer-like oligopoly offering virtually interchangeable products.

* * * * *

Of course, there's a danger that states themselves, hungry for tax dollars, could abuse their monopoly power over pot, just as they have with state lotteries. To avert that outcome, states should avoid the mistake they made with lotteries: housing them in state revenue departments, which focus on maximizing state income. Instead, the new marijuana control programs should reside in state health departments and be overseen by boards with a majority of health care and substance-abuse professionals. Politicians eager for revenue might still press for higher pot sales than would be good for public health, but they'd at least have to fight a resistant bureaucracy.⁴⁵

I think that the government ownership option is preferable to using not-for-profit companies. States use this approach for the distribution of distilled spirits. In Virginia, for example,

⁴⁴ Caulkins, *supra* note 25.

⁴⁵ Kleiman, *supra* note 9.

distilled spirits (e.g., bourbon, vodka) can be purchased only at a state-operated Alcoholic Beverage Control store.⁴⁶ State operation of the means of distribution has several advantages over even not-for-profit operation.

1. State ownership of distribution stores would make it easier for a state to monitor marijuana sales and store employees to prevent unauthorized distribution to minors and to the black market. Businesses always have an incentive to increase profits. Some stores or bars that sell alcohol or cigarettes are willing to “wink” at the requirement that a purchaser prove that he is an adult. The same phenomenon is likely to occur with the private sale of cannabis. Yes, some state employees would have the same motivation. But it is far easier for a state to monitor activities in its own stores, staffed with its own employees, than to investigate the goings-on of a large number of private businesses. State undercover law enforcement officers can also enter and look around in any part of a state-owned store, while officers would not ordinarily be able to enter non-public portions of a private business.

2. Advertising restrictions are a reasonable means of reducing demand, and they can be more easily defended against a Free Speech Clause challenge if the state owns the distribution facilities. Privately owned and operated businesses will seek to expand their client base as far as possible—that is, until the last dollar spent on expanding the business returns a dollar in new revenue. Advertising is a means of attracting new customers, and private businesses will seek to advertise their business until the marginal cost of advertising equals the marginal revenue from that business strategy. For some time now, the Supreme Court of the United States has protected purely commercial speech against federal and state regulation, striking down a host of advertising regulations⁴⁷ that, in years gone by, would easily have passed muster.⁴⁸ Whether Congress or a state can limit advertising by a private not-for-profit entity is debatable under current law. States

⁴⁶ See, e.g., VA. CODE ANN. § 4.1-101 (2019) (creating the Virginia Alcoholic Beverage Control Authority).

⁴⁷ See, e.g., *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011) (holding unconstitutional a state law restricting the sale, disclosure, and use of pharmacy records of patients to enable pharmaceutical companies to discern physician prescription practices); *Greater New Orleans Broadcasting Ass’n v. United States*, 527 U.S. 173 (1999) (*GNOB*) (holding unconstitutional a federal statute restricting gambling advertising to residents of a state where gambling is legal); *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995) (holding unconstitutional a federal law prohibiting beer labels from disclosing alcohol content); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (holding unconstitutional a state law flatly banning the advertising of liquor prices). *Contra* *United States v. Edge Broadcasting Co.*, 509 U.S. 418 (1993) (upholding constitutionality of the federal law discussed in *GNOB* to a broadcaster in a state where gambling is illegal).

⁴⁸ Compare, e.g., *Valentine v. Christian*, 316 U.S. 52 (1942) (holding that commercial speech is not entitled to Free Speech Clause protection), with, e.g., *Va. Bd. of Pharmacy v. Va. Consumer Citizens Council, Inc.*, 425 U.S. 748 (1976) (overruling *Valentine*).

are not “persons,”⁴⁹ however, and have no First Amendment rights. Accordingly, Congress can allow state ownership conditioned on foregoing advertising.⁵⁰

3. State ownership would help avoid the problems that arise whenever the law permits only one particular business form—such as not-for-profit concerns—to participate in an activity, even though the members of the industry prefer other forms—such as for-profit concerns. Corporation law is largely within the bailiwick of the states to devise, and there is a risk that particular states might bend their own laws to encourage or enable parties to obscure the true ownership of a not-for-profit enterprise. That risk might be slight, but there is little or no risk of such legal chicanery if the state itself must own the cannabis distribution business.

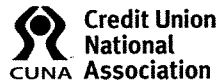
4. States ownership of marijuana distribution facilities might not have the same banking problems that for-profit and not-for-profit business would have with using the national banking system for receipts from the sale of marijuana. States that have the same structure as the federal government—that is, states that have a state-owned and operated treasury—can deposit the proceeds into its treasury rather than use the interstate banking system. That might avoid the need to revise the banking laws to address the problems resulting from the operation of a large-scale cash business. The fewer statutes modified, the lesser the risk of unintended statutory consequences.

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Thank you for the opportunity to testify today. I am glad to answer your questions.

⁴⁹ See *South Carolina v. Katzenbach*, 383 U.S. 301, 323-24 (1966) (“The word ‘person’ in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and to our knowledge this has never been done by any court.”); see generally *Return Mail, Inc. v. U.S. Postal Service*, No. 17-1594 (U.S. June 10, 2019), slip op. 6-7 (“In the absence of an express statutory definition, the [Supreme] Court applies a ‘longstanding interpretive presumption that “person” does not include the sovereign.’”) (citation omitted).

⁵⁰ Cf. *South Dakota v. Dole*, 482 U.S. 203 (1987) (upholding against a Tenth Amendment challenge a federal law conditioning receipt of a small portion of federal highway funds on a state’s adoption of a minimum drinking age).



Jim Nussle
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99 M Street SE
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June 19, 2019

The Honorable Nydia Velázquez
Chairwoman
House Committee on Small Business
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
House Committee on Small Business
Washington, DC 20515

Chairwoman Velázquez and Ranking Member Chabot,

On behalf of America's credit unions, thank you for holding the hearing entitled, "Unlocked Potential? Small Businesses in the Cannabis Industry" The Credit Union National Association (CUNA) represents America's credit unions and the 115 million members that they serve.

Credit unions and other financial institutions operating in states where cannabis is legal risk serving cannabis-related businesses even without directly accepting them as clients. Indirect connections to cannabis revenue are exceptionally difficult, if not impossible to identify and avoid. The simple reality is that the cannabis industry does not operate in a vacuum and is dependent on main street businesses. These include the office supply company that provides copy paper, the landlord that rents office space, or even the utility company providing electricity and water. Under the existing regime, a credit union or financial institution that does business with any one of these companies would be violating federal law.

Without access to mainstream banking services, cannabis businesses and the businesses indirectly related to them are less able to obey the law, pay taxes, and follow state regulations. The public safety risks posed by these businesses are easily mitigated through access to mainstream banking services and keeping the cash off the streets.

It is our belief that Congress should provide a safe harbor for financial institutions that serve state-sanctioned cannabis or cannabis related businesses from criminal.

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views.

Sincerely,

Jim Nussle
President & CEO



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June 19, 2019

The Honorable Nydia Velázquez
Chairwoman
United States House of Representatives
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
United States House of Representatives
Washington, DC 20515

Dear Chairwoman Velázquez and Ranking Member Chabot:

On behalf of the members of the Electronic Transactions Association (ETA), I am writing in support of the Small Business Committee convening a hearing focusing on the opportunities the legitimate cannabis industry presents for businesses. We believe federal action is necessary and support a solution that would resolve the conflict between federal and state laws and allow the electronic payment ecosystem to serve cannabis-related businesses in states where the activity is legal.

Thirty-three states and several U.S. territories have legalized marijuana for medical use and ten states have done so for recreational use. Currently, financial institutions as well as the broader payments ecosystem that provides payments services to state-licensed cannabis businesses could find themselves subject to criminal and civil liability under the Controlled Substances Act and federal banking statutes because the use and possession of marijuana is illegal under federal law.

Having access to the broader financial ecosystem provides the following benefits of accessing the fast, secure, global payments system:

- tracking of sales for taxation purposes;
- tracking of inventory;
- decreasing the public safety risk associated with a cash intensive business; and
- tracking of finances for BSA/AML compliance.

While, ETA takes no position on the legalization or decriminalizing marijuana at the state or federal level for medicinal or recreational uses, we do support Congress' efforts to resolve this conflict between state and federal laws to allow the banking and electronic payments ecosystem to serve cannabis related businesses in states where these businesses are legal under state law.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services; its membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, equipment suppliers, and online small business lenders.

We appreciate your leadership on this important issue. If you have any questions, please feel free to contact me directly at stalbott@electran.org.

Sincerely,

A handwritten signature in black ink that reads 'Scott Talbott'.

Scott Talbott
Senior Vice President of Government Affairs
Electronic Transactions Association





FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
 COMMISSIONER NICOLE "NIKKI" FRIED
 THE CAPITOL

**Statement of the Honorable Nicole "Nikki" Fried
 U.S. House Committee on Small Business
 Hearing on Cannabis Industry
 June 19, 2019**

Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee, thank you for the opportunity to address the extraordinary impact upon which the emerging cannabis industry can have on American small businesses.

For more than seventy years, American entrepreneurs, farmers, and businesses have been denied the boundless economic opportunities presented by cannabis. With the reclassification of hemp as an agricultural commodity per the Agricultural Improvement Act of 2018, many tens of billions in economic potential have now been unlocked for businesses of all sizes.

With more than 25,000 known uses including fibers, biocomposite building materials such as hempcrete, biodegradable paper products and plastic substitutes, and food and medical products including CBD, cannabis represents a green industrial revolution with hundreds of thousands of potential jobs in growing, processing, manufacturing, and retailing of cannabis products.

While 46 states have legalized cannabis for either medical or recreational use, there remain several crucial roles in which the federal government can either impede or facilitate the explosive growth of the legal cannabis industry – growth that is projected to outpace the fast-growing technology and healthcare sectors in coming years.

Conflicting guidance from the federal government has led to unnecessary hurdles and higher levels of risk for legally-operating businesses in this emerging market. Rural communities, veterans, people of color, and small businesses have much to gain from cannabis business growth – yet may risk jeopardizing federal benefits they may receive, such as veterans benefits or federal loans, should the federal government crack down on cannabis enterprises otherwise legal under state laws.

Relevant federal agencies, including the Department of Justice, the Drug Enforcement Agency, and the Food and Drug Administration, are strongly encouraged to revisit federal policies and regulations that run counter to the entrepreneurial growth of cannabis taking place across America.



In addition, the absence of traditional banking services forces state-licensed businesses to resort to all-cash operations, which is both inefficient and a public safety concern. Businesses cannot operate proficiently with irregularities restricting their growth, stability, and the ability to pay bills and expenses. This is an issue impacting our state and national economy.

This is why I strongly support the Secure and Fair Enforcement (SAFE) Banking Act (H.R. 2215). Lack of access to an efficient and safe banking system, and traditional loans and capital markets, puts legally-operating cannabis businesses at a crippling disadvantage. Without Congressional action, continued confusion and misinformation regarding cannabis could discourage financial institutions from partnering with businesses on this promising new commodity.

As Florida's Commissioner of Agriculture, and in my previous work as an advocate for cannabis and medical marijuana, I come from an unconventional background for the position – one which has led me to seek innovation for our state's economy. This pivotal moment in our nation's economic history requires our members of Congress to seek that same spirit of innovation.

America's emerging cannabis industry has the potential to lift up every community from coast to coast. After seven decades of lost opportunities, now is the time for Congress and our federal government to empower small businesses and embrace the economic revolution of cannabis that puts American jobs, families, and livelihoods first.

Thank you.

Nicole Fried
Commissioner of Agriculture

**Testimony before the United States House of Representatives
Committee on Small Business**

Hearing on:

**Unlocked Potential? Small Businesses in the Cannabis
Industry.”**

June 19, 2019

Statement (for the hearing record)

**Richard Blumstein, Founder and Chief Executive Officer,
Full Spectrum Omega, Inc.**

Chairwoman Velazquez, Ranking Member Chabot, and Members of the House Committee on Small Business, my name is Richard Brumfield, Founder and CEO, Full Spectrum Omega, Inc. Full Spectrum Omega, Inc. (FSO) is a privately held Service-Disabled Veteran-Owned Small Business (SDVOSB) phytocannabinoids company based in Los Angeles, CA focused on development of FDA approved phytocannabinoids to address unmet medical conditions while improving patients' lives.

For the past decade my company has developed a cannabis extract product line that has shown unique and remarkable positive results for a wide variety of medical conditions in patient use under California State Medical Cannabis provisions. FSO's products contain less than 0.3% (Δ^9 -THC) and are reported to be non-euphoric by patients. Results to date have generated significant interest and support for further development as U.S. Food and Drug Administration (FDA) approved products.

FSO currently has a signed agreement with the Federal government to test its products as wound healing treatments secondary to burns and radiation as well as non-opioid analgesics for the treatment of pain. The government laboratories and FSO are actively engaging with the Drug Enforcement Administration (DEA) to secure the required federal waiver to initiate the studies.

The Committee should be aware that U.S. small biotech companies involved in cannabis R&D for drug development are struggling with the conflicted policies and convoluted processes that must be navigated in order to obtain the required schedule I registrations from the Drug Enforcement Administration (DEA).

Currently, U.S. provisions for access to cannabis plants and products are limited to a single source, the NIDA contracted farm at the University of Mississippi. Stakeholders and we believe that term includes the FDA, understand the fundamental mismatch between the current single source model for both industry needs and the needs of academic research.

However, DEA Docket 447 with its focus on NIH grants and post-IND activities, as well as current proposed legislative language, does not clearly provide access to cannabis strains from sources sufficient to meet the requirements for all the research and development activities of product development by U.S. industry. Stakeholders understand that the intent of DEA Docket 447 and legislation is to provide expanded access to cannabis, but absent shared understanding of the differing needs of federal research institutions, academia and industry the path to effective solutions is still unclear. Rescheduling is a step in the clarification process, but it not the only step required.

I recently was asked to make a presentation to the Federal Food and Drug Administration hearing, “to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds” held in May 31 to talk about how the Federal government could help facilitate opportunities for cannabis businesses, and I would assume the majority of enterprises in this industry, like Full Spectrum Omega, are qualified small businesses.

I presented a series of issues, challenged and proposed solutions.

Issue: The FDA requested recommendations on data sources useful in providing safety and efficacy information.

Problem: The legal restriction to the type of product available from current sources (NIDA Mississippi Farm) does not allow for well-controlled studies of medical cannabis products in use in State programs or developed by US industry, even if suitable for most academic research on cannabis and cannabis components.

Solution 1: Many States are establishing patient registries that either are or could be sources of fully documented Real World Data (RWD). FDA and Congress should work on ways to facilitate leveraging of this RWD for Real World Evidence (RWE).

Solution 2: FDA should work with DEA to facilitate approval of interstate transport of low THC products made under State program licenses for the purposes of research required for FDA approval without requiring DEA to approve the source (e.g., use hemp exclusion).

Issue: The new definition of hemp, when incorporated into the Controlled Substance Act (CSA), will not exempt from schedule I those products only made from plants that meet the % THC limit. The definition confers non-schedule I status to products containing no more than 0.3% THC as made from ANY type of cannabis. Hemp-derived is only a sub-class.

Problem: Lack of understanding of the 2018 Farm Bill definition of hemp. The new hemp definition applies to Cannabis Sativa plants, parts of Cannabis Sativa plants, products of Cannabis Sativa plants, etc. that meet the % limit as defined in the Farm Bill.

Solution: WHO (0.2%) and FDA (0.1%) have already made recommendations for products at low THC levels to be de- or re-scheduled. FDA needs to be proactive in working with the DEA on rescheduling actions to facilitate R&D supporting FDA approval of low THC products. Alignment with 0.3% THC hemp limit should be actively considered.

Issue: Product development research requires industry control of plant varieties and manufacturing processes. Most historic medical cannabis products are botanical blends of multiple components as determined by plant variety and extraction/manufacturing processes. Those are the majority of products already in use in State programs, with demonstrated, but not fully documented, positive results. Such products are not available from NIDA Drug Supply Program.

Problem: Congressional supporters of medical research are embracing the position that medical products are best derived from generic cannabis/cannabis components supplied by a few bulk suppliers. There is a lack of understanding of industry requirements for product development activities vs. research activities and the viability of FDA approval under FDA drug development guidelines.

Solution: FDA should work to educate Congressional members and staff on the botanical drug approach and press Congress and DEA to provide access to industry developed products for the purposes of product development “research” activities leading to FDA approval.

Issue: The FDA doesn't want patients to forgo appropriate medical treatments by substituting unapproved products for approved medicines used to prevent, treat, mitigate or cure a particular diseases or conditions.

Problem: The timelines for approval are long and patients will continue to demand access to State program products. Significant amounts of epidemiological data are available on the safety and efficacy of cannabinoids, but additional data is being generated every day that is not available to the FDA.

Solution: While companies go through the FDA regulatory process, the FDA should use an expedited review process and consider making products available to, and data from, patients under the Right-to-Try and/or Expanded Access/Compassionate Use – i.e. FDA “**Project Facilitate**.” The FDA should work with industry to establish protocols, so as to make accommodations to utilize existing epidemiological data to reduce unnecessary study size and duration of clinical trials.

Issue: The FDA has pathways and guidelines that support seeking approval of cannabis-derived products but can't make access to US-made products legal. The DEA has provisions to make foreign made medical cannabis products legally available for medical R&D supporting FDA approval (import provisions), but no clear provisions for US industry made products. **Problem:** The path to FDA approval of U.S. made cannabis-derived products are far more difficult than approval of foreign made products. **Solution:** FDA and all federal agencies join in supporting a change to DEA policies and/or legislation that would fulfill their responsibilities to support US based companies as they seek FDA approval for cannabis-derived products.

As a small business I am concerned about the trends I see and implore the Small Business Administration to take steps to develop policies and guidelines that allow the growth of small entrepreneurs. The cannabis community is not afraid of hard work. Evolving the industry's ethos will take time, yes, but if done right, we may accomplish our goals and create a kinder and more compassionate society.

Finding our footing in this new era of big business may take longer, as stakes are high and competition is tough. But one thing is certain: 2019 will be a stellar year for the industry, especially for those who thrive on grit and grind.

Here is a list of five challenges to the industry to keep in mind for the future.

1. The laws and regulations are suffocating. Well-meaning regulators are creating rules that make starting and running a marijuana business a costly and burdensome process. Add these regulations to the current laws, and the dream of owning a cannabis business remains just that for many people. In 2019, the industry must push hard for reasonable laws and regulations.

2. The market is unpredictable due to shifting rules. California had a rocky transition to the legal market. On Jan. 1, new regulations forced many of the state's cannabis companies to close. This drove the market underground. Thus, sales underperformed for the first half of the year. The end of 2018 looks better for California, but other emerging markets, such as Michigan, should expect problems.

3. Cannabis is going corporate. Dozens of publicly traded cannabis companies are listed everywhere from the OTC to the NASDAQ, and the best are already worth billions. In 2018, corporations such as Wal-Mart and Marlboro entered the cannabis discussion. Constellation Brands put \$5 billion into Canopy Growth, a publicly traded Canadian cannabis company. GW Pharmaceuticals, a British company with FDA approval to sell cannabis-extracted CBD-based drug Epidiolex at U.S. pharmacies, has a market cap of nearly \$4 billion. In 2019, small-medium- and large-sized cannabis businesses will be acquired by bigger companies unless they develop a dedicated target market.

4. Dispensary chains are taking over. Potentially hundreds of California's dispensaries are chains with multiple locations. California-based MedMen has 22 licenses across various legal states. Washington State's Have a Heart has 15 stores in six states. Both companies are continuing their expansion. Well-funded chains are literally knocking on dispensaries' doors, asking if they are for sale.

Small dispensaries will find it difficult to compete against this bulk purchasing power, and many of the best flowers and cannabis products could be locked up in contracts with large, well-funded chains.

5. Compassion is being legislated out. California's new laws failed to include a provision for providing cannabis to people in need. Since 1996, "compassion use" programs have existed to provide free cannabis to these people.

This oversight left thousands of people without access to medicine. Patients and advocates must work to ensure that free cannabis medicines are available to those in need.

6. Specific Action.

SBA recently put out a new SOP (50 10 50(K)) making "direct" and "indirect" cannabis businesses ineligible for SBA-backed loans. That new policy defines an "indirect" cannabis business as one that generates any revenue from doing business with a direct cannabis business.

I am aware that Chairman Velazquez and other Members of the Committee sent a joint letter to SBA requesting the agency to revise this policy to provide funding opportunities to small cannabis enterprises like Full Spectrum Omega, Inc. It flies against emerging public policy to penalize small businesses that generate revenue from the sale of a good or service to a direct related to cannabis production and distribution by rendering these businesses ineligible for loans,

Once again, I thank the Committee for allowing me to make my views and experience available to the hearing record. Full Spectrum Omega, Inc. intends to remain and viable SDVOSB and is looking forward to working with the Committee to assist in the development of appropriate legislative solutions.



06/17/2019

U.S. House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

The National Cannabis Industry Association (NCIA), the largest and oldest national trade association dedicated to protecting state-legal cannabis businesses, defending state laws, and advancing federal policy reforms, strongly supports legislation that expands access to affordable capital, including traditional business loans and lending programs facilitated by the Small Business Administration (SBA), to state-licensed cannabis cultivators, processors, retailers, and other entrepreneurs throughout the country.

Currently, our nascent industry supports hundreds of thousands of jobs, tens of millions in tax revenue, and billions in economic activity. From November 2018 to March 2019, it is estimated that seven states that had taxed and regulated adult-use cannabis sales (Alaska, California, Colorado, Massachusetts, Nevada, Oregon, and Washington) collected more than \$1 billion in state tax revenue. The majority of the tax revenue was generated from small businesses, as small businesses are the backbone of the cannabis industry. Those numbers are expected to increase exponentially, as the industry continues to grow and flourish.

However, in a blow to the burgeoning state-legal cannabis industry, SBA issued guidance to lenders in April 2018 (*Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(J)*; Notice 5000-17057) limiting eligibility for SBA financial assistance for cannabis-related businesses. Under that guidance, activities that are considered illegal under federal, state, or local law are ineligible for SBA business loans because, regardless of state law, federal law prohibits the distribution and sale of cannabis. As a result of this guidance, cannabis-related businesses in compliance with state and local law, as well as ancillary businesses such as property owners, equipment manufacturers, or security providers, are all ineligible for receiving SBA loans. While good public policy dictates that affordable capital provided by SBA should play an essential role in the inevitable growth of the state-regulated cannabis industry, SBA guidance makes that a near impossibility.

To operate safely and successfully, cannabis-related businesses must have access to working capital like any other small business in the United States. By denying these basic financial services for small businesses, we run the risk of severely hampering future economic development and job growth, including in areas that have been economically stimulated by the cannabis industry, and where tax revenue generated by the industry has helped fund infrastructure and transportation projects, expand education programs, and support public services. Without access to working capital, small business owners will inevitably struggle to retain workforce talent and may be unable to create high-paying jobs in communities where they are needed most. These policies also adversely affect those who need this assistance the most: communities that have been most impacted by the War on Drugs. It is imperative that we level the playing field and allow those communities to fully leverage SBA's existing programs that have historically

helped those demographics most in need.

Entrepreneurship and small business owners have always been the backbone of America's ingenuity. These small businesses have historically enabled economic development, provided high-quality jobs, and spurred significant product innovation. SBA's loan programs serve a unique and essential role, ensuring that the country remains highly competitive in the global economy. Addressing the challenges created by conflicting federal and state laws will allow state-compliant small businesses to lawfully operate in a fully regulated environment and would also serve to encourage the expansion of regulated markets, increase consumer safety standards, reduce product availability to minors and combat illegal trafficking throughout the country. In short, supporting state-legal small businesses will serve to preserve this burgeoning industry while protecting consumers and government equities.

The National Cannabis Industry Association greatly appreciates the opportunity to submit this letter of support. Small business loans and support from the SBA are of critical importance to our nearly 2,000 members (most of whom are small businesses) and to the state-legal cannabis industry at large. On behalf of our small business members, we encourage Congress to revise outdated federal policies and allow SBA to provide the regulated cannabis industry with the vital capital necessary to increase economic development and facilitate job creation. With SBA's support, this fledgling American industry is certain to thrive for generations to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Smith', followed by a period.

Aaron Smith
Executive Director & Founder



National Organization for the Reform of Marijuana Laws

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June 19th, 2019

Submitted to:
The House Committee on Small Business

Testimony of The National Organization for the Reform of Marijuana Laws
Unlocked Potential? Small Businesses in the Cannabis Industry

The National Organization for the Reform of Marijuana Laws (NORML) – the nation’s largest and oldest marijuana policy reform organization – encourages the passage of pending federal legislation to allow for the Small Business Administration to engage in support for entrepreneurs and small businesses in the nascent yet rapidly growing cannabis industry.

Thirty-three states, Washington, D.C. and the U.S. territories of Guam and Puerto Rico have enacted¹ legislation specific to the physician-authorized use of cannabis. Moreover, an estimated 73 million Americans now reside in the ten states where anyone over the age of 21 may possess cannabis legally. An additional thirteen states have passed laws specific to the possession of cannabidiol (CBD) oil for therapeutic purposes.

NORML acknowledges that the medical cannabis market and the recreational cannabis market are not necessarily one and the same, and that individual consumers of these markets may possess needs that differ from one another.

To date, these statewide regulatory programs are operating largely as voters and politicians intended. The enactment of these policies have not negatively impacted workplace safety², crime rates³, traffic safety⁴, or youth use⁵ patterns.

As these two different legal sectors continue to grow, they will continue to stimulate economic development and created hundreds of millions of dollars in new tax revenue.

According to the New York Times⁶, "[L]istings for cannabis-related positions have rocketed to the top echelon of the fastest-growing-job categories on sites like Indeed and ZipRecruiter. Julia

¹ <https://norml.org/legal/medical-marijuana-2>

² <https://norml.org/marijuana/fact-sheets/item/marijuana-legalization-and-impact-on-the-workplace>

³ <https://norml.org/marijuana/fact-sheets/item/marijuana-regulation-and-crime-rates>

⁴ <https://norml.org/marijuana/fact-sheets/item/marijuana-and-psychomotor-impairment>

⁵ <https://norml.org/marijuana/fact-sheets/item/marijuana-regulation-and-teen-use-rates>

⁶ <https://www.nytimes.com/2019/04/25/business/economy/jobs-in-cannabis-weed-marijuana.html>



National Organization for the Reform of Marijuana Laws

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Pollak, a labor economist at ZipRecruiter, said the company's data put the number of cannabis jobs nationwide at 200,000 to 300,000."

Further, state and local excise tax collections on retail adult-use cannabis sales surpassed \$1 billion in 2018 -- a 57 percent increase over 2017 levels, according to data compiled by the Institute on Taxation and Economic Policy⁷.

Data published by the Small Business Administration shows⁸ that small businesses employ 47.5% of the private workforce -- or nearly 1 in 2 taxpaying jobs.

Yet the Small Business Association, charged with helping "Americans start, build, and grow businesses," cannot legally engage in this sector of the economy.

While African Americans and other minorities have historically been disproportionately⁹ targeted and adversely impacted by cannabis criminalization, they are less likely to have the resources to establish a new enterprise in a highly regulated industry. This lack of equity must not persist in an environment where adult use cannabis production and sales are legal.

In order to provide for inclusiveness within the legal industry, federal policy should strive to reduce roadblocks for qualified entrepreneurs in order to encourage participation from formerly disenfranchised populations. Particularly, in consideration for enterprising individuals who would benefit most from the critical resources that the Small Business Committee provides for job creators around the country.

It is for these reasons and more, NORML asks the House Committee on Small Business to advance legislation that would allow the Small Business Administration to engage with entrepreneurs and small businesses.

⁷ <https://itep.org/taxing-cannabis/>

⁸ <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>

⁹ <https://norml.org/marijuana/fact-sheets/item/racial-disparity-in-marijuana-arrests>



Safe and Responsible Banking Alliance

June 19, 2019

"Unlocked Potential? Small Business in the Cannabis Industry"
 Testimony before the Committee on Small Business
 Becky Dansky, Executive Director

Chairwoman Velazquez, Ranking Member Chabot, and Members of the Committee:

Thank you for holding this hearing, "Unlocked Potential? Small Business in the Cannabis Industry," highlighting the need for cannabis industry small businesses to have access to Small Business Administration (SBA) loans and other support services. Congress and the SBA hold the keys to unlocking an enormous wave of innovation and entrepreneurship for the emerging cannabis and CBD markets.

I represent the Safe and Responsible Banking Alliance (SARBA), a coalition of financial institutions, associations, governments, and business groups advocating for a solution to federal cannabis banking prohibitions. We advocate for legislation that make traditional financial products available to businesses involved in the lawful sale of cannabis and related products in states and tribal lands where such sales are legal. SARBA focuses on four major policy areas related to cannabis: public safety, institutional risk, small business and minority access, and patient access. Our testimony today will focus on small business and minority access.

Small Business & Minority Access

For small businesses to thrive, they need affordable access to capital. Unfortunately, as cannabis is a scheduled narcotic, the federal government treats all financial transactions related to cannabis as unlawful, meaning cannabis-related companies cannot receive traditional small business loans. However, the overwhelming majority of Americans live in jurisdictions where some form of cannabis sales is legal under state, tribal, or territorial laws. This discord between state and federal laws has constrained financial markets and barred startup companies and small businesses from utilizing traditional financial tools such as small business loans, bank accounts, and insurance.

The lack of access to capital has led many startup companies to turn to alternative financing arrangements at the very time that cash flow is tightest. Private equity firms may be willing to loan startup funds to a cannabis or CBD-related business; unfortunately, that private capital will come with a significantly higher interest rate which can be akin to predatory lending. Higher interest rates also put companies accessing private capital at a severe competitive disadvantage to similar companies that are owned by wealthy individuals.

Access to SBA loans, services, and counseling would increase access to capital among demographics that have been disproportionately disadvantaged by the federal prohibition of cannabis. Granting the SBA authority to work with cannabis-related businesses would allow them to access small business loans – loans which would be considered illegal under current law. In effect, this ban has barred those with the least access to capital—often minorities—from becoming involved in and profiting from the industry.

www.BankSafe.org

Furthermore, many states prohibit anyone with even a minor marijuana arrest on record from participating in the regulated legal marijuana business. Minorities are disproportionately represented in marijuana arrests; despite equal drug use rates, African Americans are almost four times more likely to be arrested for marijuana than their white counterparts¹. This economic disadvantage, compounded with disproportionate arrests, puts minorities at a significant disadvantage in this emerging industry. SBA support would address this by allowing entrepreneurs to receive affordable small business loans legally, thereby somewhat leveling the playing field and increasing opportunities for minority representation in the industry.

SBA support would also help create space for more women in leadership roles in the cannabis industry. The percentage of women holding executive positions in cannabis businesses is higher than the average across larger U.S. businesses: 36% in the cannabis industry versus 23% overall². Because this is a new, rapidly-expanding industry³, there is promise that a broader range of individuals can be successful in this field. SBA access would expand this by offering women and minorities small business loans, presenting a unique opportunity to lift up communities that are historically disadvantaged.

Conclusion

Authorizing the SBA to work with and support cannabis-related businesses is not the same as proposing mass legalization, nor does it make any normative statements about cannabis use. Support from the SBA will increase the ability of small businesses to access affordable capital and to participate in an enormous potential market that is currently restricted to individuals or companies that have vast amounts of capital available. In jurisdictions where cannabis transactions comply with state laws, it makes sense for federal agencies, including the Small Business Administration, to provide loans and support for small businesses that serve the cannabis and ancillary industries.

Thank you for the opportunity to provide this testimony. For additional information on our work, please visit www.banksafe.org.

Becky Dansky
Executive Director
Safe and Responsible Banking Alliance
bdansky@banksafe.org

¹ [ACLU: Marijuana Arrests By The Numbers](#)

² Marijuana Business Daily: Women and Minorities in the Marijuana Industry

³ From July 2017 to July 2018, marijuana retail sales totaled \$972,527,246 according to the Washington State Liquor and Cannabis Board.

To: Chairwoman Nydia M. Velázquez
U.S. House Committee on Small Business

Madame Chair and members of the Small Business Committee:

My name is Dan Anglin and I am a resident of Loveland, Colorado. I am a veteran of the United States Marine Corps from 1988-1992 and served during Desert Shield / Desert Storm in a non-combat position training Marines in proper use and handling of firearms in desert conditions. I am a father to two grown men and have been married for 23 years, which at 48 years old is almost half of my life. I am the Chief Executive Officer of CannAmerica Brands Corporation, a publicly listed company in both the United States (OTC: CNNXF) and Canada (CSE: CANA), and I am one of thousands of business owners in the legal and highly regulated cannabis industry in the United States.

I was one of the first business owners to receive a license for legal cannabis operations in the world, with Colorado being the first state to issue licenses to conduct cannabis business, and ours was #00001. In my 9-year career as a licensed cannabis operator, I've owned every type of license issued by the state of Colorado and have earned licenses in other states. My current company, CannAmerica, was founded in 2015 and licenses its intellectual property to operators in multiple states, including Colorado, Nevada, and Maryland, with many more coming on line this summer.

It is my honor to be here today to speak to you on the issues up for consideration by the Committee. Running a small business has its challenges, but for a cannabis business owner, there are even greater challenges when operating a state-sanctioned and licensed business that is simultaneously illegal on the federal level. As a veteran of the United States Marine Corps, I face additional challenges with the choice of being a member of the cannabis industry – do I risk losing my earned benefits by engaging in the career I want, which has more protections than any other business in my home state of Colorado, or do I do everything I can to protect my self-interests rather than pursue entrepreneurship?

My immediate concerns are many, but for the sake of time, following is a list of fundamental challenges and discriminatory policies against cannabis businesses and U.S. Military veterans working in the industry:

- Any program that provides either financial assistance or tax relief for starting a business is unavailable due to the fact that cannabis is federally classified as a Schedule 1 substance;
- No program paid for by federal funding allows for cannabis businesses to participate in the benefits of said program, regardless of the protected class (if any) of the business owner;
 - This means that no program designed to provide business startup or expansion assistance to minorities, (race, sex, age, etc.) or veterans, or disabled persons, or

other qualifying candidates is available to anyone in the business of cannabis (or servicing the cannabis industry).

- No Small Business Administration program for financial or any other type of assistance that currently exists is available to any cannabis business;
 - This means that loan programs, mentorships (where retired CEOs can advise new entrepreneurs), assistance in navigating complicated issues such as tax preparation and human resources, funding, etc., are all unavailable to anyone in the cannabis industry – therefore we must find these resources on our own, or go to great lengths to fund these efforts without assistance.
- Because of the complicated state vs. federal law issues for cannabis businesses, it is nearly impossible to maintain a bank account in any standard bank, except for the ones which charge exorbitant fees to confirm the source of funds from cannabis businesses.
 - This means cannabis businesses have no meaningful nor protected access to:
 - Commercially available standard lending products;
 - Lines of credit;
 - Establishing credit as a business or business owner; or
 - Federal lending programs for small businesses.
- Based on this reality, cannabis businesses are left with the following options when either opening a business or expanding an existing business:
 - Somehow managing to have millions of dollars at their disposal for the costs associated with obtaining licensure, securing high-value properties which must be specifically zoned for cannabis operations, lawyers, licensing fees, start-up costs, and loss leaders; or
 - Bringing on equity partners who fund the efforts at high rates (normally prohibited by state and federal laws protecting new business from predatory lending practices) or extremely large portions of equity that are unbalanced from the personal risks of the actual operators and the sweat equity involved; or
 - Borrowing at extremely high rates with overly aggressive repayment and / or conversion terms, which would normally be considered predatory lending practices in any other situation, except that the business is considered illegal by the federal government.
- Additionally, because the local municipalities have the responsibilities to direct zoning, it leaves operators with an extremely limited number of properties allowable for their business.
 - This means those ‘pot properties’ instantly go up in value for purchase or leasing, and it means those property owners ‘cash in’ on the business by either charging 10-20x what would normally be the price per square foot, OR even more egregiously, they want a slice of the revenues or equity of the business to ‘allow’ the cannabis business to operate within their property. This would normally not be a consideration in any other business, but there are no protections from the federal government from this type of predatory practice. And what new business owner is going to take a property owner to court for a fair hearing (which ultimately will likely be rejected at the federal level), when what they want is to open their business to build their dream? So far – no one.

- Finally, because of our tax status at the federal level, cannabis business owners not only pay a 'criminal enterprise' penalty through 280E, they also receive none of the incentives for opening and operating a business, for creating employment opportunities in low-income neighborhoods, or for operating in enterprise zones that would normally receive rebates for opening a business in a low-income neighborhood or other zone that needs more industry. Cannabis business owners get no support, or incentives, or rebates, or resources. None. It's discrimination in an era of progress on all of the above and allows predatory practices to be openly engaged.

Further, as a veteran of the U.S. armed forces, there are a completely different set of discriminatory practices, generating a legitimate fear for veterans who want to participate in the industry but don't want to lose their earned benefits.

- Becoming a member of the cannabis industry requires background checks and registration of employment with the state —is worrisome because being listed in the cannabis industry provides the VA with an opportunity to make discriminatory decisions for earned benefits, creating a barrier to entry into the industry for veterans;
- All income derived from the cannabis industry is a disqualifying factor for consideration of earned VA home loans — a bureaucratic way to prevent veterans from living the American dream of home ownership through an earned benefit by denying their income;
- The belief that punitive measures will be carried out on earned benefits is preventing veterans from bringing their skill sets and training to a burgeoning professional industry with tremendous growth potential.

However, these concerns of discrimination, prevention of access to assistance and programs that are federally funded, denial of access to full banking and credit opportunities, and loss of earned benefits for our nation's bravest are not just limited to those directly involved in the cannabis industry, but also directed at companies that provide normal services for the industry.

Cannabis utilizes the same services as any other brick and mortar business: real estate, utilities, local government services, and supply chains for the type of business that they are engaged in (retail, manufacturing, agriculture, transportation, security, software, etc.). Companies that provide services to cannabis businesses are scrutinized for their source of funds, and if they are receiving assistance from federally funded programs, run the risk of those programs being revoked or their loans canceled, or lines of credit revoked, or bank accounts shut down. Meaning that if an electrician who accepts a job from a cannabis business to upgrade, install, or bring up to code a cannabis operation, that electrician risks punitive measures from financial institutions or assistance programs for engaging in normal business.

This creates a nightmare for supply chain for cannabis businesses too. By not having a credit rating due to inadequate banking and no access to standard credit and lending products, all supplies are required to be pre-paid prior to production for any materials a cannabis business needs: packaging, cardboard, food ingredients, agriculture supplies, office supplies, retail supplies, etc., often meaning that a cannabis business can be taken advantage of by suppliers

because the order had to be paid for prior to receiving the goods, and if the vendor chooses not to provide the goods or services that were pre-paid, there is no real recourse for the cannabis business to recoup their loss because no federal court will provide the standard protections provided to any other business.

It is very rare for an American manufacturing or company or its brokers to provide goods for a cannabis business, meaning that most of the packaging and supplies needed to comply with state-established standards of consumer protection must come from overseas. This is the opposite of the goals of creating a new American economy based on the creation of jobs and commerce with an emerging industry. While costs can be saved with foreign supplies and trade for American companies, it does not provide the growth for manufacturers that Americans expect for our economy. These punitive measures by the federal government and banking institutions create a path for other countries to enjoy the economic uptick created in states that legalize cannabis businesses, not U.S. manufacturing.

In summary, prohibiting businesses, owners, and employees from engaging in standard and customary business practices and receiving the protections of federal-backed banking products and standard lending and credit practices is discrimination against citizens who are exercising their state-sanctioned rights to engage in the cannabis industry.

I'm grateful for the opportunity to present this extremely condensed version of the challenges faced by cannabis business owners, veterans in the industry, and our employees. I'm available to answer any questions you may have and look forward to continuing this important conversation with the members of this committee and any other member of Congress looking for more information.

Thank you,

