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House Appropriations Committee
Subcommittee on Commerce, Justice, Science, and Related Agencies

"Medical Marijuana" Language in the
Fiscal Year 2018 CJS Appropriations Act

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Thank you, Chairman Culberson and Ranking Member Serrano for the opportunity to submit testimony about medical marijuana language with regards to the FY18 CJS Appropriations Act. I represent Smart Approaches to Marijuana (SAM), the leading non-partisan national organization offering a science-based approach to marijuana policy. SAM was founded by former Congressman Patrick Kennedy, senior editor of *The Atlantic* David Frum, and myself, a White House advisor to three U.S. Administrations.

SAM is an advocate for alternatives to incarceration for marijuana use, including those building on the successful drug court model that restore citizens to productive members of families and society. No one should go to jail and have the rest of their life ruined simply for smoking a joint. At the same time, SAM is strongly opposed to the legalization of marijuana, which is leading our country to the next Big Tobacco—the commercialization, branding, and advertising of another addictive substance. This tendency is already visible in Colorado and other legalized states, where child-friendly marijuana candies, gummies, and other edibles dominate the market, and where the marijuana industry is already rolling back no-smoking laws to permit marijuana smoking in restaurants and other public spaces.

Accordingly, SAM requests the absence of medical marijuana language in the Fiscal Year 2018 Commerce, Justice, Science, and Related Agencies Appropriations Act. In previous years, this language has stated:

> *None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.*

Both the Fiscal Year 2016 and 2017 budgets submitted by President Obama requested the removal of this language.

There are sufficient substantive reasons to remove medical marijuana language. Rather than change the law—which is in Congress's power to do—the medical marijuana language merely

refuses to enforce the law. In this sense, the medical marijuana language inhibits the President from taking care that the laws be faithfully executed.

Several other considerations also strengthen the case for removal of the medical marijuana language, as follows.

A. Marijuana Is Not a States' Rights Issue

Ultimately, those who argue that the commercial sale of marijuana is a states' rights issue are arguing one of two things: either the entire Controlled Substances Act (CSA) is unconstitutional, or marijuana is completely harmless and should be removed from scheduling under the CSA completely. (Calls to merely reschedule marijuana within the CSA contradict the states' rights argument and would instead lead to greater federal regulation of the drug.) Both arguments are incorrect.

1. All justices in Gonzalez v. Raich recognize the constitutionality of CSA

The Supreme Court answered the most fundamental questions about the ability of Congress to preempt state law and ban the growing, distribution, and sale of marijuana in the 2005 case of *Gonzales v. Raich*. In this case, the defendant was growing marijuana plants under California's medical marijuana program for personal use. Federal agents later destroyed her marijuana plants in an enforcement action. She filed suit, contending that her marijuana plants were legal under California law and she did not intend to sell the marijuana. Her attorneys argued that Congress did not have the power to regulate her actions under the Interstate Commerce Clause. The Supreme Court ruled 6-3 against her that Congress could indeed ban marijuana, even for personal use under state medical marijuana programs.

As Justice Scalia stated in his concurring opinion, "In the CSA, Congress has undertaken to extinguish the interstate market in Schedule I controlled substances, including marijuana. The Commerce Clause unquestionably permits this."[i]

Regardless of one's opinion of the outcome of *Raich*, the fact remains that the Supreme Court has interpreted the Controlled Substances Act (CSA) to apply to all facets of marijuana cultivation and distribution. Even in the dissents to the *Raich* case, the justices acknowledged the constitutionality of the CSA when it applies to the commercial sale of marijuana—something that was not at issue in that case but constitutes an integral part of present-day marijuana legalization programs.

2. If CSA isn't constitutional, then states' rights extend to heroin and cocaine

Even most advocates of marijuana legalization do not argue for complete repeal of the CSA. To be sure, there are a few fringe voices who advocate for the full legalization of all drugs. This is hardly a mainstream position. Nonetheless, those who argue that states have the right to legalize the commercial sale of marijuana may inadvertently be making the same legal argument for other harmful drugs, like cocaine or heroin.

3. Current science argues against removing marijuana from CSA

Current medical literature and statistical surveys are clear: marijuana is a drug of abuse, is physiologically and psychologically addictive, and causes clear negative effects in both individuals and society. Regular use of marijuana can cause permanent changes in the brain, increasing the mass of the nucleus accumbens (reward center),[ii] similar to the effect of other addictive drugs. Cessation of use may result in physical withdrawal symptoms, including cravings, decreased appetite, sleep difficulty, and irritability.[iii] Surveys show that regular marijuana users report more severe consequences than alcohol in most categories, including serious problems at work or school, taking time away from work or school, causing problems with family or friends, or spending a lot of time getting/using drugs.[iv] Drugged driving fatalities have markedly increased in states which have legalized marijuana, posing a hazard to the general public.[v] The current body of evidence strongly reinforces current classification of marijuana as a controlled substance under the Controlled Substances Act, particularly with respect to modern, high-potency marijuana and extracts.

4. Rescheduling does not impact the states' rights question

As noted above, rescheduling marijuana from a Schedule I to a Schedule II drug within the CSA would not resolve the conflict between federal and state law. The whole marijuana plant, as opposed to certain isolated compounds it contains, has never successfully passed the FDA's clinical trials process for any medical use, and thus would not be legal for prescription or sale as a Schedule II or lower substance even if it were rescheduled.

B. Existing State Medical Marijuana Programs Are a Failed Experiment

1. Medical marijuana states are hubs for black market activity

A recent report by the Oregon State Police reveals that:

- Oregon is producing three to five times the amount of marijuana than can be consumed in state;
- that 70% of the sales of marijuana are occurring in the black market;
- that marijuana is being diverted out of state as far as Florida and even internationally; and
- that the counties with the highest rates of out of state diversion also have the most medical marijuana grower and dispensary registrants[vi].

Colorado's medical marijuana program has similarly been abused. Allowing cultivation of up to 99 medical marijuana plants at home has resulted in both Mexican drug cartels and domestic drug dealers hiding in plain sight, shipping product out of state to more lucrative illegal markets. As Colorado Attorney General Cynthia Coffman has said, "The criminals are still selling on the black market. … We have plenty of cartel activity in Colorado [and] plenty of illegal activity that has not decreased at all."[vii]

2. Medical marijuana programs devolve into de facto legalization

Because of the wide variety of conditions medical marijuana is authorized to treat, and a number of unscrupulous doctors who are willing to recommend marijuana, anyone who wants medical

marijuana can get it in many states. Marijuana is recommended to "treat" conditions as diverse as insomnia, headaches, writer's cramp, and back pain. A 2017 survey of Oregon's medical marijuana program showed that just 1.5% of participating physicians (26 out of 1,715) were responsible for over 75% of the medical marijuana card applications (47,354 out of 62,903)[viii]. Other surveys have revealed that under 5% of the holders of medical marijuana cards have cancer; instead, the average medical marijuana patient is a 32-year old white male with no history of life-threatening disease and a history of drug and alcohol abuse.[ix] Easy medical marijuana access is often publicly advertised on billboards or signs, with the most commonly cited example being the "Dr. Reefer" billboard in Las Vegas, NV.

C. Legitimate, FDA-Approved Medications Derived from the Marijuana Plant Help People More than Unregulated State Programs

1. Existing law can be improved to research medications without rescheduling marijuana

It is possible under existing law to research medications that can be derived from the marijuana plant. In fact, several such medications already exist. Marinol is a synthesized form of THC and is a Schedule III drug which is used to stimulate appetite in cancer and AIDS patients. Sativex is an oral spray with isolated cannabinoids used to treat spasticity in MS patients. Epidiolex is an isolated CBD oil medication that is in the final phase of FDA clinical trials for treating severe seizures in children. This purified CBD medication has been tested for safety, and families can now apply through the FDA's Early Access Program to gain access to the medication for their suffering children, regardless of whether CBD oil has been legalized in a particular state.

2. Despite state regulations, existing products sold under state marijuana laws are dangerously undosed, unlabeled, and unstandardized, placing people at risk

While purified, high-dose CBD oil is showing tremendous promise in clinical trials in treating childhood epilepsy, many unscrupulous dispensaries and manufacturers have taken advantage of desperate families to sell them untested products. When the FDA has performed tests on many of these products, they found some that were very low in CBD content and high in THC content. Others were contaminated with mold. Some contained no detectable levels of the active ingredient advertised on their labels. These products were very dangerous for use, and the FDA sent cease and desist letters to these bad actors.[x]

3. Rescheduling marijuana does not increase research or access to treatments

In the case of marijuana, rescheduling the drug to Schedule II or lower would immediately trigger requirements that the FDA regulate the safety and efficacy of the drug. Because the marijuana industry has realized that whole plant marijuana is unlikely to ever pass through FDA trials since it cannot be dosed or standardized, they no longer argue for rescheduling the drug. Rescheduling would also not reduce any barriers to research, as researchers for Schedule II drugs face nearly all of the same requirements and restrictions as those who research Schedule I drugs.

4. Congress can easily facilitate additional, legitimate research through proposed legislation

Much more research is needed, and Congress could reduce some of the barriers to research without rescheduling marijuana. H.R. 5549 [114th] – the Medical Marijuana Research Act by

Congressman Andy Harris (MD-1) and S. 3077 [114th] – the MEDS Act by Senator Brian Schatz (D-HI) would accomplish that goal. We anticipate that Senators Feinstein (D-CA) and Grassley (R-IA) are also preparing similar marijuana research legislation for introduction.

D. Conclusion

In summary, SAM asks that you remove medical marijuana language from the Fiscal Year 2018 CJS Commerce, Justice, Science, and Related Agencies Act. "Medical marijuana" does not meet the definition of medicine; it has not been through clinical trials and has no standardized, prescribed dose. Instead, as the recent Oregon State Police report shows, medical marijuana legalization has provided cover for illicit, black market activity. The experiment has failed. The Department of Justice should be able to enforce the law when states have failed to do so.

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[i] *Gonzales v. Raich* (2005).

[ii] Gilman, et al., Cannabis Use Is Quantitatively Associated with Nucleus Accumbens and Amygdala Abnormalities in Young Adult Recreational Users**,** *Journal of Neuroscience.* 16 April 2014, 34 (16):5529-5538.

[iii] Gorelick DA, Levin KH, Copersino ML, et al. Diagnostic Criteria for Cannabis Withdrawal Syndrome. *Drug Alcohol Depend*. 2012;123(1-3):141-147.

[iv] Caulkins, Johnathan P., The Real Dangers of Marijuana. National Affairs. Winter 2016 (30).

[v] AAA Foundation for Traffic Safety. Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014. May 2016. Web. 23 Oct. 2016.

[vi] Oregon State Police. A Baseline Evaluation of Cannabis Enforcement Priorities in Oregon. January 2017.

[vii] "Special report, 'Clearing the haze:' Black market is thriving in Colorado." *Colorado Springs Gazette*, 20 Mar. 2015. Web. 21 Oct. 2016.

[viii] Oregon Health Authority. Oregon Medical Marijuana Program: Statistical Snapshot. April 2017.

[ix] O'Connell, T. et al. Long Term Marijuana Users Seeking Medical Cannabis in California (2001–2007): Demographics, Social Characteristics, Patterns of Cannabis and Other Drug Use of 4117 Applicants. *Harm Reduction Journal*. 2007 4:16.

Nunberg, H. et al. An Analysis of Applicants Presenting to a Medical Marijuana Specialty Practice in California. *Journal of Drug Policy Analysis*. Feb 2011; 4(1): 1.

[x] FDA News Release. "2016 Warning Letters and Test Results for Cannabidiol-Related Products." Web. 27 April 2017.