



Written Testimony for  
Decriminalizing Cannabis at the Federal Level: Necessary Steps to Address Past Harms  
Senate Committee on the Judiciary  
Subcommittee on Criminal Justice and Counterterrorism  
July 26, 2022

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Thank you, Chairman Booker and Ranking Member Cotton, for the opportunity to submit testimony on the subject of the reform of marijuana laws. I represent Smart Approaches to Marijuana (SAM), the nation’s leading nonpartisan, nonprofit 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 former White House drug policy advisor to the Obama Administration, as well as two other U.S. Administrations. SAM is advised by a Science Advisory Board, which is comprised of researchers and physicians from top university research institutions, including Harvard, Yale, and Johns Hopkins.

SAM maintains that the most effective means of preventing the negative consequences associated with marijuana are to (1) implement evidence-based campaigns to prevent marijuana use before it begins, (2) intervene on early use in healthcare and related settings, (3) treat cannabis use disorder, (4) not criminalize users for low-level possession, (5) refrain from legalizing the drug, and (6) generally discourage use.

Based on the outcomes in states that have legalized marijuana, we have case studies on the harms and effects of legalization. Nationwide legalization—and the subsequent commercialization of marijuana—presents alarming public health and public safety problems for the United States for six main reasons:

- (1) Legalization increases marijuana use among youth;
- (2) Legalization disproportionately harms lower-income communities and communities of color;
- (3) Legalization is not a cost-effective policy;
- (4) Legalization reinforces, not eradicates, the underground market for marijuana;
- (5) Legalization increases rates of marijuana-impaired driving; and
- (6) Legalization is a burden on employers and the business community.

#### **A. Legalization increases marijuana use among youth**

While supporters of legalization argue that a legal marijuana market would limit access to marijuana by youth and thus lower their rates of use, use among youth has steadily increased concurrently with legalization. More youth use marijuana in “legal” states—and they use high-potency products more frequently. These trends are driven by the decreased perception of risk, as

well as the increased availability of marijuana that accompanies legalization. It should be no surprise that the Biden-Harris Administration, through the White House Office of National Drug Control Policy, has acknowledged “the risks associated with youth marijuana use.”<sup>1</sup>

A 2022 study of 21,863 individuals found that youth in “legal” states were more likely to use marijuana than youth in non-legal states.<sup>2</sup> A study in Seattle found that “nonmedical marijuana legalization predicted a higher likelihood of self-reported past-year marijuana and alcohol use among youth.”<sup>3</sup> Legalization is also associated with an increased likelihood of youth using marijuana vapes and edibles, both of which are more potent than traditional marijuana.<sup>4</sup> This same study also found that youth in “legal” states first try marijuana at a younger age. Moreover, there was a 25% increase in cannabis use disorder (CUD), also known as addiction, among 12–17-year-olds in “legal” states.<sup>5</sup>

One-in-three youth living in a “legal” state engaged with marijuana promotions on social media, and youth who engaged with marijuana promotions were five times as likely to use marijuana.<sup>6</sup> The Cato Institute found, “All states that have legalized marijuana fall below the average U.S. risk perception.”<sup>7</sup> Alongside increases in youth use and lower risk perceptions, a national study of high school students found that “Nearly half of all marijuana users reported driving after use during the past 30 days.”<sup>8</sup>

The harms of youth marijuana use, regardless of whether the user resides in a “legal” or non-legal state, include:

- Adolescent users of marijuana lost an average of 5.5 IQ points in adulthood, compared to an average loss of 0.7 points among lifelong non-users;<sup>9</sup>
- High school users demonstrated poorer academic performance and higher dropout rates than their peers who did not smoke marijuana;<sup>10</sup>
- Nearly 70,000 individuals younger than age 18 went to the emergency department for a marijuana-related reason in 2021;<sup>11</sup>
- 3 in 10 users will develop a cannabis use disorder (that is a 30% rate); and<sup>12</sup>
- Adolescent use can alter brain development, resulting in life-long consequences.<sup>13</sup>

Moreover, in 2014, 4.1% of pregnant women used marijuana in the past month<sup>14</sup>; this increased to 8.0% in 2020.<sup>15</sup> The Substance Abuse and Mental Health Services Administration concluded, “marijuana use during pregnancy can be harmful to a baby’s health and cause many serious problems, including stillbirth, preterm birth, and growth and development issues.”<sup>16</sup> Similarly, a 2019 study found that a parent’s marijuana use increases the likelihood of their child using marijuana—it also increases their child’s risk of tobacco and opioid use.<sup>17</sup>

The efforts to legalize marijuana are playing out with devastating effects on youth across the country, while public health agencies are ill-equipped to mitigate the consequences. Unfortunately, youth are not the only group that are being harmed by the legalization and commercialization of marijuana.

## **B. Legalization disproportionately harms lower-income communities and communities of color**

Although legalization is promoted as a pathway to generational wealth for those impacted by the War on Drugs, many first-time entrepreneurs of color in “legal” states have instead lost money and been unable to compete with their well-financed competitors. Nationally, fewer than 2% of all marijuana businesses are owned by minorities.<sup>18</sup> Despite Illinois having pledged to prioritize “equity” licenses, none of the marijuana shops were owned by racial minorities.<sup>19</sup> And the U.S. Cannabis Business Conditions Survey found that 67.8% of minority-owned marijuana shops were not profitable, suggesting that many of those that did open are on the brink of closure.<sup>20</sup>

In “legal” states, marijuana shops have been concentrated in communities of color and poorer communities, where the marijuana industry assumes there will be a greater demand for their products. For instance, in Denver, 45% of marijuana shops were located in zip codes where the average income levels were below the 25<sup>th</sup> percentile.<sup>21</sup> A study of the locations of medical marijuana dispensaries in Los Angeles concluded, “dispensaries opened in areas with a higher proportion of Black residents.”<sup>22</sup> Put together, when choosing where to locate dispensaries, owners followed the data to low-income communities and communities of color.

As a result, the harms associated with marijuana dispensary locations, stemming from increased rates of misuse, are being concentrated in vulnerable communities. The importance of this cannot be overstated. Disadvantaged communities lack many of the resources needed to combat this targeting by the addiction-for-profit industry and lack adequate access to treatment facilities, thereby exposing community members to an increased likelihood of substance misuse.<sup>23</sup> Rather than ameliorating health-related disparities, legalization would instead exacerbate many of them.

There have been calls to turn the page on the War on Drugs, due in part to seemingly disparate arrest rates and rising overdose rates.<sup>24</sup> SAM agrees that marijuana users should not be arrested for possession alone and that access to treatment and support services should be increased. But the legalization, normalization, and commercialization of marijuana would inadvertently harm many of the communities it purports to help.

## **C. Legalization is not a cost-effective policy**

The costs of the adverse effects of legalization, some of which have been outlined above, outweigh any potential revenue that it will generate. A study SAM undertook in Connecticut found that the costs associated with marijuana legalization would total \$216 million, compared to a projected \$113.6 million in tax revenue.<sup>25</sup> In other words, marijuana’s costs exceed revenues by over 90%. Similarly, a study in Colorado found that for every \$1 in tax revenue generated from the sale of marijuana, the state spent \$4.50 mitigating marijuana’s consequences, ranging from costs related to the healthcare system to decreased productivity.<sup>26</sup> Marijuana will not be a workable, pragmatic, or even helpful budgetary solution in the short- or long-term.

Marijuana legalization would also result in a variety of currently unquantifiable costs, including:

- Increases in alcohol, tobacco, and opioid use and misuse

- Increases in short- and long-term recovery from cannabis use disorder
- Increased rates of use among youth
- Property and other economic damage from marijuana extraction lab explosions
- Controlling an expanded black market, sales to minors, and public intoxication
- Effects on the environment from increased water and power usage, in addition to heightened risks for forest fires and the use of prohibited chemicals
- Other administrative costs of most state legalization programs, such as:
  - money for drugged driving awareness campaigns;
  - drug prevention programs; and
  - pesticide control and other agricultural oversight mechanisms
- Long-term health impacts of marijuana use

This last issue, in particular, represents a major cost of the two currently legal, addictive recreational drugs—tobacco and alcohol. The long-term health impacts of tobacco represent almost half of the costs of tobacco in California, and it would be foolish not to recognize their impact here.<sup>27</sup> Far too little is known about the adverse long-term health effects of marijuana—among them increased rates of mental illness, respiratory problems, and a tendency to develop other substance use disorders—to make the same sort of cost models seen for tobacco.

Colorado’s Department of Public Health & Environment warned, “it is apparent that progress has occurred quicker in the marijuana industry than in science...few studies have been conducted that examine the impact different product types with differing THC concentrations have on human health.”<sup>28</sup> Given that research on the health effects of marijuana is on par with 1930s tobacco research, marijuana use may cause other health problems that are currently unknown.

#### **D. Legalization reinforces, not eradicates, the underground market for marijuana**

Commercialization advocates have long argued that legalization will reduce black market marijuana activity in “legal” states. However, the legalization and commercialization of marijuana, perhaps counterintuitively, have led to greater black-market activity than ever before.

Given its avoidance of the taxes and expenses associated with operating a storefront, the black market undercuts the prices of the “legal” market. The Department of State’s International Narcotics Control Strategy Report noted, “U.S. consumer demand for illicit marijuana has increased following marijuana regulation in several U.S. states, due to higher costs for legal marijuana and reduced illicit domestic production.”<sup>29</sup> In 2019, \$8.7 billion of the revenues made from marijuana sales in California were illegal, compared to \$3.1 billion in legal revenues.<sup>30</sup>

In 2015, years after legalization passed, Colorado Attorney General Cynthia Coffman told reporters: “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.”<sup>31</sup> California Governor Gavin Newsom declared that the black market is “getting worse, not better” since legalization and has deployed the National Guard to fight cartel activity.<sup>32</sup>

Not all illicit marijuana is illicitly produced; legally produced medical and recreational marijuana is often diverted to the illicit market. The Drug Enforcement Administration’s National Drug Threat Assessment stated, “some marijuana produced by state-licensed growers is diverted and

sold illicitly rather than through state-licensed retailers,” suggesting that legalization often fuels the black market rather than replaces it.<sup>33</sup> The U.S. Postal Service noticed a significant increase in the number of packages mailed to and from Colorado that contained marijuana.<sup>34</sup>

The illicit market cannot be regulated away; it circumvents aggressive bureaucracy, and legalization only hinders the efforts of law enforcement to curtail illicit drug trafficking and the criminal activity associated with illicit drug trafficking. The surge in black marketeering derives from organized criminal groups “hiding in plain sight” in legalized states.

### **E. Legalization increases rates of marijuana-impaired driving**

Driving under the influence of marijuana is an increasingly damaging phenomenon due to the legalization and normalization of marijuana in certain states. It was estimated that the federal legalization of marijuana would result in 6,800 additional traffic fatalities.<sup>35</sup>

A 2022 study found that legalization in California, Colorado, Nevada, Oregon, and Washington was correlated with a 6% increase in injury-causing car crash rates and a 4% increase in fatal crash rates.<sup>36</sup> In Colorado, the number of traffic deaths involving a driver who tested positive for marijuana increased from 55 in 2013 to 131 in 2020.<sup>37</sup> AAA found that the number of drivers who tested positive for marijuana after a fatal crash doubled after legalization in Washington.<sup>38</sup>

The National Institute on Drug Abuse found that marijuana use impairs driving in a number of ways: by slowing reaction time, decreasing coordination, and impairing the judgment of time and distance.<sup>39</sup> The reduced perception of risk and the prevalence of impaired drivers on the road threaten the lives of the driver, their passengers, bystanders, and other drivers on the road.

Compounding the risk of an increasingly impaired driving population is the difficulty posed to law enforcement officers who attempt to stop and detain marijuana-impaired drivers. The technology needed to determine THC levels is underdeveloped and lacks the precision of traditional breathalyzers. Additionally, many of the “legal” states failed to create guidance and a standard level of impairment for THC prior to legalization, which left law enforcement officers in the dark and legislators playing catch-up.

### **F. Legalization is a burden on employers and the business community**

Unlike cigarettes, marijuana’s psychoactive properties intoxicate and create tangible problems in the workplace. A peer-reviewed study of thousands of employees indicated that marijuana users were unjustifiably absent from work 77 percent more often than non-users and had a rate of workplace injuries that was 85 percent higher than the control group.<sup>40</sup>

Per the National Survey on Drug Use and Health, the nation’s premier annual survey on drug, alcohol, and tobacco use, people who used marijuana in the last month were:

- 40 percent more likely to have missed at least one day of work in the last month due to injury or sickness; and

- 106 percent more likely to have missed at least one day of work in the last month because they “just didn’t want to be there.”<sup>41</sup>

As rates and frequencies of use have increased in states that have legalized marijuana, so too has use by employees, both on and off the job. The CEO of GE Johnson, a large Colorado-based construction company, has said his company “has encountered so many job candidates who have failed pre-employment drug tests because of their THC use that it is actively recruiting construction workers from other states.”<sup>42</sup>

Quest Diagnostics, a leading drug testing company, observed a steady increase in positive drug tests for marijuana, in addition to marijuana-involved workplace accidents.<sup>43</sup> Quest’s Vice President of Employer Solutions said, “Employers are wrestling with significant recruitment and retention challenges...Eager to attract talent, employers may be tempted to lower their standards. In the process, they raise the specter of more drug-related impairment and worksite accidents that put other employees and the general public in harms’ way.”

## G. Conclusion

Regardless of good intentions or high hopes, the legalization of marijuana is a dangerous policy that harms the lives and livelihoods of countless Americans, especially youth. Additionally, despite prevailing narratives, legalization widens the underground market and provides minimal relief in the form of tax revenues, which will be outweighed by the short- and long-term harms of increased use. Respectfully, I urge this Committee to reject the legalization of marijuana.

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