



# Americans Against Legalizing Marijuana

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February 14, 2020

Scott Riplinger, Legislative Director  
Senator Mike Crapo  
239 Dirksen Senate Office Building  
Washington, DC 20510

## **Re: Response to information request for the SAFE Banking Act.**

Dear Mr. Riplinger

We are physicians, scientists, parents, attorneys, educators and researchers from the health policy communities, reaching out to you for help. Our nation is in urgent need of public leadership on marijuana. Our country has acknowledged the opioid and vaping epidemic and needs to acknowledge the marijuana epidemic due to its legalization and commercialization.

Please accept this as a response to Senator Crapo's request for information about the health and public welfare issues regarding the SAFE Banking Act. We are very glad that he is giving this a thoughtful approach and seeking information. We appreciate that he is looking out for our children.

Many other leaders have been disappointing in their lack of leadership on this issue, for many have absorbed misinformation without asking for the counterbalancing information derived from the biomedical community. The public is uninformed concerning the effects of marijuana.

## **This Is Not a States' Rights Issue**

Senator Crapo wanted information about state rights in interstate commerce and banking for institutions who operate in multiple states with different state rules. There are some claims that the states and banks have a "states' right" to do what they are doing with marijuana and that they just need guidance from the federal government on how to do it right. If they "do it right" then they should be allowed to bank and to exponentially expand the commercial sales of marijuana.

This approach will cause great harm to our nation and our children. Attached as Exhibit 1 is our letter from distinguished researchers and physicians to the US Surgeon General providing the latest research about the many harms of marijuana. These harms will only increase if the federal government allows this illegal and dangerous industry to flourish. There is no way to “do it right” without causing more harm. The harms documented in our letter include damage to:

1. Mental Health - Psychosis
2. Mental Ability
3. Cardiac Health
4. Risks of Cancer
5. Use by Pregnant Women and resulting damage to the unborn
6. Opiate use
7. Damage to children
8. Violence
9. DUI

There is also the issue of damage to the environment (see our attached Petition in Exhibit 2)

### **There Is No States’ Right Under the US Constitution to Commercialize Marijuana**

The states have no right under the Commerce Clause to the US Constitution to promote or permit the sale of marijuana in interstate commerce. It violates the Constitution and the federal laws such as the Controlled Substances Act (CSA) that were passed in accordance with the Constitution. So says the US Supreme Court and the many federal courts that have considered this “states’ right.” [1]

Why have the courts said this? The Congressional findings in the Controlled Substances Act provide the Commerce Clause and international treaty legal justification for the CSA. [2] The sections we have placed in bold pertain to marijuana commercialization.

21 U.S.C.A. 801 Congressional findings and declarations: controlled substances

The Congress makes the following findings and declarations:

- (1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people. (this applies to those cannabis medicines approved by the FDA - all other have not proven to be safe and effective and may be dangerous. CBD causes liver damage.)**
- (2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.**



**(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce.** Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because--

**(A) after manufacture, many controlled substances are transported in interstate commerce,**

**(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and**

**(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.**

**(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.**

**(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate.** Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

**(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.**

**(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances.**

### **The 10th Amendment - the States' Rights Amendment**

Some argue that the 10<sup>th</sup> Amendment to the US Constitution somehow permits the marijuana industry to operate under the doctrine of "states' rights." The 10<sup>th</sup> Amendment does not permit the marijuana industry to operate, even in the case of "medical" marijuana. This has been ruled on twice by the Supreme Court. See: United States v. Oakland Cannabis Buyers' Cooperative, 532 US 483 (2001); Gonzales v. Raich, 545 U.S. 1 (2005). The Courts of Appeals and District Courts agree.

### **Recreational Marijuana**

A Tenth Circuit Court opinion, written by now Justice Gorsuch, held that statutes criminalizing conspiracy to traffic in marijuana were within Congress's constitutional authority to regulate interstate commerce. Statutes criminalizing conspiracy to traffic in marijuana did not violate the Tenth Amendment (state rights). United States of America v. Rutherford, 472 Fed.Appx. 863 (CA 10 2012).

## **Medical Marijuana**

It is indisputable that state medical-marijuana laws do not, and cannot, supersede federal laws that criminalize the possession of marijuana or that protect our medicines. United States v. Oakland Cannabis Buyers' Cooperative, 532 US 483 (2001); Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Hicks, 722 F.Supp.2d 829 (E.D. Mich. 2010)

A DC Circuit opinion, joined in by now Justice Kavanaugh, held that the Drug Enforcement Administration's (DEA) interpretation of a regulation requiring that a generic cannabinoid drug have FDA marketing approval was not otherwise arbitrary and capricious. The court noted that "the presence of FDA marketing approval obviously is powerful evidence that a drug has currently accepted medical use and accepted safety for use under medical supervision. John Doe, Inc., v. Drug Enforcement Administration, 484 F.3d 561, 571 (CA DC 2007). Marijuana products must be approved by the FDA before they can be sold as medicine or as a food. This is not a states' right matter.

## **Food products and CBD**

The marijuana businesses are selling marijuana as medicine and as foods such as candies and cookies and other products that contain up to 99% high potency THC. Several studies show that many of these products are contaminated with pesticides and heavy metals. The states have failed to protect the public from the marijuana industry. See the attached memo on the failures of the states to regulate this. (Exhibit 3). Also is a paper on CBD. (Exhibit 4)

Children have access to these contaminated products. This is not a states' right matter. In order to protect the safety and the purity of foods, the FDA enforces the Federal Food, Drug, and Cosmetic Act (FD&C Act) against the introduction of "adulterated" foods into interstate commerce. 21 USC 331. Foods are considered to be adulterated if they contain THC and/or CBD. Medicines that have THC or CBD must also be approved by the FDA before being marketed. The Commissioner of the FDA in December, 2018 stated that:

Cannabis and cannabis-derived products claiming in their marketing and promotional materials that they're intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases (such as cancer, Alzheimer's disease, psychiatric disorders and diabetes) are considered new drugs or new animal drugs and must go through the FDA drug approval process for human or animal use before they are marketed in the U.S. Selling unapproved products with unsubstantiated therapeutic claims is not only a violation of the law, but also can put patients at risk, as these products have not been proven to be safe or effective. This deceptive marketing of unproven treatments raises significant public health concerns, as it may keep some patients from accessing appropriate, recognized therapies to treat serious and even fatal diseases.



Additionally, it's unlawful under the FD&C Act to introduce food containing added CBD or THC into interstate commerce, or to market CBD or THC products as, or in, dietary supplements, **regardless of whether the substances are hemp-derived**. This is because both CBD and THC are active ingredients in FDA-approved drugs and were the subject of substantial clinical investigations before they were marketed as foods or dietary supplements. Under the FD&C Act, it's illegal to introduce drug ingredients like these into the food supply, or to market them as dietary supplements. This is a requirement that we apply across the board to food products that contain substances that are active ingredients in any drug. (Emphasis added) [3]

The FDA has issued warning letters and advisories on the dangers of these unapproved products. [4]

## **Specific Concerns raised by Senator Crapo**

### **1. THC Levels**

There is now crystalline THC that is 99.99% THC. Many recent marijuana products are advertised as being 94 or 95% THC as one of the enclosed advertisements shows. This is far higher than the "Woodstock Weed" of years past that was 2-3% THC. However, the public perception of marijuana is based on the marijuana of the past. (Exhibit 5)

There is no safe potency for marijuana. Many of the studies documenting the damage marijuana causes were done with low THC marijuana. The high potency marijuana is even worse.

### **2. Marketing Tactics to Children**

The marijuana industry is following the play book of the tobacco industry in trying to get our kids addicted. Attached are examples of marijuana advertisements from Colorado. (Exhibit 5). They include images of Santa Claus, kids' movies and cartoons, and a "back to school special" of marijuana, and marijuana infused candy, lollipops, gummie bears, etc.

There is no safe way to permit marketing that will not effect children. The marijuana industry will resist this as they know that once they hook a kid they have that person as a lifetime customer.

### **3. Lack of Research on Marijuana's Effects?**

There is no shortage of research showing the damage caused by marijuana. There is much research on the effects of marijuana going back decades.

In 2017, the National Academy of Sciences (NAS) landmark report written by top scientists concluded after a review of over 10,000 peer-reviewed academic articles, that marijuana use is connected to, among other problems:

1. respiratory problems;
2. mental health issues (like psychosis, social anxiety, and thoughts of suicide);
3. increased risk of car accidents;
4. progression to and dependence on other drugs, including studies showing connections to cocaine and heroin use;
5. learning, memory, and attention loss (possibly permanent in some cases); and low birth weight. [FN5]

The 2016 United States Surgeon General report on addiction states that marijuana is a serious threat to the physical and mental health of our children and that its use is a major threat to public safety. [FN6]

The American Psychiatric Association states that current evidence supports, at a minimum, a strong association of marijuana use with the onset of psychiatric disorders. [FN7] Mental illness leads to crime, homelessness and enormous costs. It is also not good for business.

The National Institute on Drug Abuse (NIDA) research shows that up to 30 % of marijuana users may develop some degree of problem use that can include addiction. Among young users, the drug may reduce thinking, memory, and learning functions. Marijuana use has also been linked to mental health problems, such as depression, anxiety, and suicidal thoughts among teens. [FN8]

A study discussed in a 2017 article in Scientific American shows that people who had consumed marijuana before age 18 developed schizophrenia approximately 10 years earlier than others.

The higher the frequency of use the earlier the age of schizophrenia onset. Neither alcohol use nor genetics predicted an earlier time of inception, but marijuana did. Marijuana use during puberty is a major risk factor for schizophrenia. The more marijuana you take - and the higher the potency - the greater the risk. [FN9]

A new study shows that young people with marijuana dependence have altered brain function that may be the source of emotional disturbances and increased psychosis risk that are associated with marijuana abuse. The alterations were most pronounced in people who started using marijuana at a young age. The findings reveal potential negative long-term effects of heavy cannabis use on brain function and behavior. [FN10]

### *Marijuana use leads to opiate abuse*

The recent research shows that marijuana use is associated with an increased risk of prescription and opioid misuse disorders. [FN11] We now have an opiate epidemic. Lets not make it worse.

### *Workplace issues*

According to the annual 2017 Quest Diagnostics Drug Testing Index™ the use of drugs in our national workforce reached the highest drug test positivity rate in 12 years. This was an analysis of more than 10,000,000 workplace drug test results. The marijuana positive rate has increased dramatically in the last three years with increases in the “recreational” marijuana states of Colorado and Washington being double the national average. For Colorado it was a increase of 11% and Washington 9%. [FN12] Do you want more drug users in our workplaces?

#### **4. Clear and Conspicuous Disclosures on Products**

These products should not be sold so labeling is not an issue.

#### **5. Unborn Children and Pregnant Women**

There is no doubt that marijuana use damages human reproduction. (Exhibit 6). These products should not be sold.

#### **6. Age Restrictions**

Marijuana use is damaging at any age.

#### **7. The Types and Delivery Mechanisms**

These products should not be sold.

#### **8. Public Health and Safety Concerns**

Attached is a paper by Dr. Hoover Adger on “What is the harm from today’s marijuana?” (Exhibit 7)

There are many other quality of life problems that come with marijuana legalization. (Exhibit 8) In an editorial from the Colorado Springs Gazette about the situation in Colorado they state that: [13]

1. Residential neighborhoods and other areas “reek of marijuana.”



2. A homelessness growth rate that ranks among the highest rates in the country as homeless substance abusers migrate there for easy access to pot.
3. A doubling in the number of drivers involved in fatal crashes who tested positive for marijuana.
4. More marijuana in schools than teachers and administrators ever feared. Drug violations reported by Colorado's K-12 schools have increased 45% even as the combined number of all other violations has fallen.
5. An increase in high school drug violations of 71% since legalization.
6. School suspensions for drugs increased 45%.
7. The National Survey on Drug Use and Health found Colorado ranks first in the country for marijuana use among teens, scoring well above the national average.

Do you want this for your neighborhoods, your schools and your kids? Please act to protect our innocent children and do not permit the defacto legalization of marijuana through the SAFE Banking Act.

Respectfully yours,



Carla D. Lowe  
President AALM

References

[FN1] See also, 21 U.S.C.A. 801 et seq.; 21 U.S.C. 841(a)(1), 844; United States v. \$186,416.00 in U.S. Currency, 590 F.3d 942, 945 (9th Cir. 2010) (there is no exception for marijuana distribution or possession under the federal Controlled Substances Act[.]); United States v. Scarmazzo, 554 F.Supp.2d 1102, 1109 (E.D.Cal. 2008) (Federal law prohibiting the sale of marijuana is valid); United States v. Landa, 281 F.Supp.2d 1139, 1145 (N.D.Cal.2003) (“[O]ur Congress has flatly outlawed marijuana in this country”); Assenberg v. Anacortes Housing Authority, 268 Fed. Appx. 643 (9th Cir. 2008) (holding that a plaintiff’s use of marijuana rendered him ineligible to reside in federally subsidized housing pursuant to 42 U.S.C. 13661, and that there was no duty to accommodate his drug use), aff’d, cert. denied.

[FN2] Congress enacted the CSA for the purposes of consolidating various drug laws into a comprehensive statute, providing meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthening law enforcement tools against international and interstate drug trafficking. 21 U.S.C. 801 et seq.

3. <https://www.fda.gov/NewsEvents/PublicHealthFocus/ucm484109.htm>

4. FDA CBD Warning letters

<https://www.fda.gov/NewsEvents/PublicHealthFocus/ucm484109.htm>



<http://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>

<https://www.fda.gov/consumers/consumer-updates/some-medicines-and-driving-don't-mix>

5. Health Effects of Cannabis and Cannabinoids: Current State of Evidence and Recommendations for Research. See:

<http://nationalacademies.org/hmd/~media/Files/Report%20Files/2017/Cannabis-Health-Effects/Cannabis-chapter-highlights.pdf>

6. Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health, November, 2016, Chapters One and two and Appendix D pp.65-66 at:

<https://addiction.surgeongeneral.gov/surgeon-generals-report.pdf>

7. American Psychiatric Association, 2013 "Position Statement on Marijuana as Medicine," paragraph 1 found at: <https://www.psychiatry.org/home/policy-finder>

8. "Is Marijuana Addictive?" DrugFacts: Marijuana, (June 2015), at:

<https://www.drugabuse.gov/publications/drugfacts/marijuana> - citing: Hasin DS, Saha TD, Kerridge BT, et al. Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013. JAMA Psychiatry. 2015;72(12):1235-1242. doi:10.1001/jamapsychiatry.2015.1858.

9.

<https://www.scientificamerican.com/article/link-between-adolescent-pot-smoking-and-psychosis-strengthens/>

10.

<https://www.news-medical.net/news/20180116/Study-reveals-negative-long-term-effects-of-heavy-cannabis-use-on-brain-function-and-behavior.aspx>

11. <https://www.drugabuse.gov/news-events/news-releases/2017/09/marijuana-use-associated-increased-risk-prescription-opioid-misuse-use-disorders>

12. <http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing>

13.

<http://gazette.com/editorial-the-sad-anniversary-of-big-commercial-pot-in-colorado/article/1614900>