



**THE STATES ACT:
FEDERAL MARIJUANA LEGALIZATION
MASQUERADING AS STATES' RIGHTS**

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THE COUNTERPOINT

THE STATES ACT: FEDERAL MARIJUANA LEGALIZATION MASQUERADING AS STATES' RIGHTS

The federal government's heavy-handed influence on the everyday choices made by Americans is alarming, and Congress should seek to inhibit federal encroachment on state issues. However, the federal government maintains a legitimate interest in enforcing federal laws relating to dangerous drugs, including marijuana.¹

The Strengthening the Tenth Amendment Through Entrusting States Act, or the STATES Act, seeks to amend the Controlled Substances Act of 1970 by exempting the production and sale of marijuana from federal oversight and enforcement in accordance with state or tribal law.

The safety and efficacy of drugs are not determined by public opinion or ballot initiative, they are determined by science.¹ States do not determine what drugs are safe for the marketplace, the FDA does.² Science is not on the side of marijuana legalization, rather, scientific evidence has placed marijuana in the most restrictive drug schedule established by the Controlled Substances Act.³ The current state marijuana legalization trend is inconsistent with federal law, international treaties, and causes harm to individuals and communities. The STATES Act would exacerbate these issues while simultaneously ignoring the scientific and economic data that shows legalization is harmful. This act should be opposed for three main reasons:

¹Cannabaceae, commonly referred to as cannabis, is a family of plants that includes the genus Cannabis Indica and Cannabis Sativa. While marijuana can be considered a member of either genus, hemp is a member of the Cannabis Sativa genus. Plants Profile for Cannabis sativa (marijuana). (n.d.). Retrieved from <https://plants.usda.gov/core/profile?symbol=CASA3>

²The terms "cannabis" and "marijuana" are often used interchangeably because of the negative connotation of the term "marijuana." The marijuana industry and the medical and scientific research community usually use the term "cannabis" when speaking about "medical marijuana" however there is often little to no difference between medical and recreational marijuana obtained from dispensaries. Here, cannabis and marijuana are used interchangeably depending on the citing source's terminology. Berenson, Alex. (2019). Tell Your Children: The Truth about Marijuana, Mental Illness, and Violence. New York, New York: Free Press.

BREAK DOWN

Key Points

► The STATES Act is a bill written by the marijuana industry to give them everything they want: banking access, investment, and government approval with no government oversight or regulation, while ignoring the negative effects legalization has on communities, families, and individuals.

► The STATES Act's "state's rights" approach is inherently flawed. Neither drug enforcement, nor the determination of which drugs are "safe and effective" are determined by the states.

► Legalization of marijuana does not eliminate the black market and the STATES Act provides no assurances that bad actors, such as drug cartels, would be prevented from participating in the state-legal market.

► Despite public opinion and claims from the marijuana industry, there is no proven, commonly accepted medicinal use for marijuana. "Medical" marijuana legalization serves as the precursor to recreational legalization and has been crucial in shaping the public's opinion of marijuana.

► The problems that surround marijuana legalization are entirely self-inflicted. Without having a broader conversation about legalization, the STATES Act will cause more confusion and harm than it claims to solve.

1. Despite its name, the STATES Act does not strengthen the Tenth Amendment, and marijuana legalization is not a state's rights issue. Although the STATES Act purports to give the ultimate governing authority of marijuana policy to the states, neither drug enforcement nor the determination of what drugs are safe and effective are state issues. Proponents of the bill ignore the effects that the legalization of marijuana within one state has on neighboring states as well as the national market and the international community.

2. Investors win; communities lose. The enactment of the STATES Act would legitimize the marijuana industry financially and grant marijuana businesses access to the federal financial system without assurances that bad actors, such as drug trafficking organizations, would be unable to participate. This would not only empower the growth of the marijuana industry by allowing aggressive Wall Street investment, but would compromise the integrity of the U.S. banking system by opening up Schedule I drug operations to its involvement and its investment.

3. The STATES Act not only legalizes marijuana use but legitimizes it, even though its negative impacts on mental health, public health, violence, adolescent behavior, and development are well documented. By exempting marijuana from the federal enforcement and oversight of the Controlled Substances Act, the STATES Act must conclude that marijuana is completely harmless with no potential for abuse. However, decades of research say the opposite.

During the 2019 legislative session, the marijuana industry suffered defeat after defeat

on the state level; in Vermont, New Hampshire, Connecticut, New Mexico, New Jersey, New York, and in many other states, legislatures declined to enact pro-recreational marijuana measures.⁴ Although the legalization conversation is ongoing around the nation, the marijuana industry is relentlessly pushing their pro-legalization agenda on the federal level for their own financial gain. The STATES Act is a crucial element in this legalization strategy.

The marijuana industry has spent millions lobbying and drafting this legislation for their own personal gain, all at the expense of public health, safety, justice, and common sense.⁵ The STATES Act is not about states' rights; it is a blatant attempt to deceive the public to legalize marijuana on the federal level in the name of state autonomy. Just like the legalization of marijuana for medical use has served as a precursor to recreational use, the STATES Act serves as a precursor to full, nationwide marijuana legalization.

Although the STATES Act sounds like an appealing compromise, especially for states' rights advocates and proponents of small government, it is logically inconsistent and dishonest. The STATES Act would exacerbate current state marijuana legalization issues while simultaneously ignoring the scientific and economic data that shows legalization is harmful. The STATES Act would hurt law enforcement efforts to end drug trafficking in the U.S., irreparably compromise the integrity of the U.S. banking system, and damage the physical and economic health of the American public. Pushing legislation like the STATES Act further advances the reckless legalization trend.

IN SPITE OF ITS NAME, THE STATES ACT DOES NOT STRENGTHEN THE TENTH AMENDMENT

The Tenth Amendment to the U.S. Constitution says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁶ As the government

grows, many of the powers not explicitly enumerated to the states have been taken over by the federal government; this is not the small government vision had by many of the Founding Fathers. Centralized big government is often inefficient and wasteful. While state governments are far from perfect, they are closer to the people that they serve which usually leads to more accountability and more efficient use of public funding. There are numerous issues that are handled on the Federal level that should be relegated to either state authority or personal choice. However, drug enforcement is not one of them.

In 1938, Congress passed the Federal Food, Drug, and Cosmetics Act of 1938 which prohibited the distribution of adulterated food and drugs in interstate commerce.⁷ It gave authority to the Commissioner of Food and Drugs to determine what was safe for interstate distribution and until the Commissioner determines what drugs are safe and effective, new drugs are prohibited from entering the market.⁸ Americans have entrusted the Food and Drug Administration (FDA) with this responsibility since then. Congress has re-affirmed this judgment in numerous measures on numerous occasions, including the passage of the Food and Drug Modernization Act of 1997, the Food and Drug Administration Amendments Act of 2007, the Food and Drug Administration Safety and Innovation Act (2012), and every year through the appropriations process.⁹ The safety and efficacy of drugs are not determined by what popular opinion says; the FDA determines what drugs are safe for the market and effective based on scientific evidence.¹⁰

“There are numerous issues that are handled on the Federal level that should be relegated to either state authority or personal choice. However, drug enforcement is not one of them.”

The STATES Act would not give authority “back” to the states and has nothing to do with the Tenth Amendment. The power to regulate drugs and determine what drugs are available to the national

market has never been a state issue; it has always been a federal issue because of the federal government’s constitutional duty to regulate interstate commerce.¹¹ Congress is acting well within its powers and duties when it protects citizens from dangerous substances. Congress’ rationale for passing the Controlled Substances Act in 1970, the detrimental effects of drugs on the health and general welfare of the American people, the effect of drug trafficking on interstate commerce, and the illicit, underground black market’s disregard for these effects, still stands today.

Congress passed the Controlled Substances Act in 1970 because illicit drug traffickers do not honor state laws or state lines. Similarly, drug trafficking is more than a local, state, or national issue; it is an issue with international reach and international consequences. Congress saw the need for a nationwide policy that united local and state drug enforcement efforts and clarified federal law regarding illicit and dangerous substances.¹² States are not permitted to regulate or determine the drug policy of any other substance classified under the Controlled Substances Act, and there is no compelling, legally sound, or scientifically based reason why marijuana should be treated differently.¹³ States are not permitted to exempt themselves from other federal laws and codes such as the Clean Water Act, the Internal Revenue Code, or other economic regulations.¹⁴ The Controlled Substances Act is no different.¹⁵

In order to support this bill from a states’ rights perspective, supporters must also conclude that the entire Controlled Substances Act is unconstitutional, and states are solely responsible for handling all activity relating to all drugs, including heroin, fentanyl, and other illicit drugs. Even if one believes that marijuana is “safe” (which decades of scientific research contests, see Part 3) and thus is different from all other Schedule I drugs, this decision would not be up to the states to determine, but up to the FDA.¹⁶

Study after study continues to show conclusively that marijuana does have a high

potential for abuse which reinforces the need for its Schedule I categorization.¹⁷ In 2016, President Obama’s Department of Health and Human Services, along with the Drug Enforcement Administration (DEA), reiterated this and refused to reschedule marijuana from a Schedule I drug because of its high potential for abuse and lack of current acceptable medical use.¹⁸ Furthermore, because of obligations outlined in international drug treaties, the United States cannot reschedule marijuana to a schedule less restrictive than Schedule II.¹⁹

A. CURRENT MARIJUANA ENFORCEMENT LANDSCAPE

The Controlled Substances Act of 1970 is the federal law that gives the federal government the authority to regulate the manufacture, possession, importation, use, and distribution of narcotics, stimulants, depressants, hallucinogens, anabolic steroids, and other chemicals, such as those used in conjunction with the manufacturing of narcotics.²⁰ The Controlled Substances Act classified all regulated substances into one of five schedules that take into account potential for abuse, accepted medical use, and safety.²¹

The Controlled Substances Act classified all regulated substances into one of five schedules. Drug schedules take into account the following eight factors:

1. Actual or relative potential for abuse
2. Scientific evidence of its known pharmacological effect
3. The state of current scientific knowledge regarding the drug
4. History and current pattern for abuse
5. Scope, duration, and significance of abuse
6. Public health risk
7. If the drug is a psychic or psychological dependence liability
8. Whether the substance is an immediate precursor to another controlled substance²²

Controlled substances are classified into five

drug schedules based on these factors. Schedule I drugs have a high potential for abuse, no currently accepted medical use in the United States, and there is no accepted safety for the use of the drug under medical supervision.²³ Schedule II drugs have a high potential for abuse, a currently accepted medical use (with restrictions), and abuse of a Schedule II drug may lead to dependence.²⁴ Schedule III drugs have a potential for abuse, but less than Schedules I and II, have currently accepted medical use, and abuse could lead to moderate or low physical dependence and high psychological dependence.²⁵ Schedule IV substances have a low potential for abuse, have a currently accepted medical use, and abuse may lead to limited dependence compared to Schedule III drugs.²⁶ Schedule V drugs have an even lower potential for abuse, has a currently accepted medical use, and abuse has a limited dependence as compared to those in Schedule IV.²⁷

Although the STATES Act does not re-schedule marijuana, allowing states to enforce their own marijuana policies can only be accomplished via the exemption of marijuana from federal enforcement which equates to the federal legalization of marijuana.

The STATES Act will exempt marijuana in states where marijuana has been legalized from the federal enforcement and oversight that the Controlled Substances Act currently provides. The STATES Act amends Part G of the Controlled Substances Act to exempt “any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of [marijuana].”²⁸ Although the STATES Act does not re-schedule marijuana, allowing states to enforce their own marijuana policies can only be accomplished via the exemption of marijuana from federal enforcement which equates to the federal legalization of marijuana.

On October 19, 2009, Deputy Attorney General David W. Ogden issued a memo (Ogden Memo) with formal guidelines regarding medical marijuana enforcement under the Controlled Substances Act.²⁹ The memo advised U.S. Attorneys that focusing federal resources on investigating and prosecuting medical marijuana cases was likely not a good use of resources if marijuana was being used for legitimate medical purpose and the use was in line with state laws.³⁰

Ogden maintained Department of Justice (DOJ) interest in prosecuting federal drug crimes, but only if the conduct is not in “clear and unambiguous compliance with applicable state law.”³¹ According to the Ogden Memo, although states cannot authorize violations of federal law, certain behaviors that may correlate with marijuana trafficking should raise a red flag and would warrant further investigation: unlawful possession or use of firearms, violence, sales to minors, violations of state law regarding financial or marketing activities, excessive amounts of marijuana that exceeded state-imposed limits, illegal sale or possession of other controlled substances, or ties to other criminal enterprises.³² This memorandum was a departure from DOJ policy, and even though its purpose was to give clarity to a murky issue, caused confusion which warranted a clarification memo from Deputy Attorney General Cole in June of 2011.

DOJ wrongfully cited prosecutorial and enforcement discretion regarding state marijuana laws, but prosecutorial discretion cannot be employed to facilitate illegal activity.

By 2013, 20 states and the District of Columbia had legalized some form of medical marijuana and two states, Colorado and Washington, had legalized recreational use.³³ In 2013, Deputy AG Cole issued another guidance (Cole Memo) to U.S. Attorneys regarding marijuana enforcement.³⁴ The Cole Memo suggested that, as long as a marijuana entity was acting in accordance with state marijuana laws and regulations, the federal government would

not enforce the Controlled Substances Act except to maintain specific federal priorities.³⁵ The federal government still maintained an interest in preventing marijuana distribution to minors, preventing revenue from funding criminal organizations, preventing the diversion of marijuana from a legal state to a state where it is not legal, preventing marijuana activity from being used as a front for the trafficking of illicit drugs, preventing violence, preventing drugged driving and the exacerbation of public health consequences, preventing the growth of marijuana on public lands, and preventing marijuana use on federal property.³⁶

The Cole Memo was a surprising departure from existing policy, went way beyond the Ogden Memo, and DOJ failed to consult state and local law enforcement, former DEA administrators, or the State Department when crafting the memo.³⁷ DOJ wrongfully cited prosecutorial and enforcement discretion regarding state marijuana laws, but prosecutorial discretion cannot be employed to facilitate illegal activity.³⁸ During a 2013 Senate Judiciary hearing on the conflicts between state and federal marijuana laws, Senator Grassley (R-Iowa) questioned Deputy AG Cole on this memo’s metrics for success:

“The Cole memorandum suggests that the Department will not seek to enforce the Controlled Substances Act except for certain federal priorities so long as the States that legalize marijuana implement effective regulatory schemes. Those priorities include the diversion of marijuana from Colorado to other States, increased use among minors, and increased fatalities from drugged driving. Yet Colorado has seen a sharp uptick in each of these three priorities over the past few years.

“Moreover, a recent audit concluded that the Colorado Department of Public Health ‘does not sufficiently oversee physicians who make medical marijuana recommendations.’ Another recent audit found that the city of

*Denver did 'not have a basic control framework in place' to regulate its medical marijuana program. Denver did not even know how many marijuana businesses were operating in the border.*³⁹

Chairman Grassley questioned the Department's judgment in trusting Colorado to effectively regulate recreational marijuana as it was struggling to regulate medical marijuana. Colorado had already violated the Cole Memo priorities before recreational use was legalized in Colorado.⁴⁰ DOJ believed that by asking states to put together a rigid regulatory framework for marijuana, that these issues would be avoided.⁴¹ However, states did not and have not assembled adequate regulatory frameworks for maintaining these priorities.⁴²

No state can succeed in effective marijuana regulation because marijuana is not a state issue and cannot be effectively enforced as a state issue.

In January of 2018, Attorney General Sessions issued a memorandum that rescinded all previous marijuana guidance, including the Ogden Memo and Cole Memo, clarifying that DOJ still maintains an interest in state marijuana operations, regardless of state laws as long as marijuana is still illegal on the federal level.⁴³ State laws do not supersede federal laws.

Sessions directed U.S. Attorneys to follow principles for prosecuting federal crimes and marijuana would no longer be an exception.⁴⁴ The Department of Justice must enforce federal laws and the Cole Memo's premise that states could effectively regulate marijuana was deeply flawed. No state can succeed in effective marijuana regulation because marijuana is not a state issue and cannot be effectively enforced as a state issue.

B. MARIJUANA'S IMPACT ON INTERSTATE COMMERCE

Marijuana legalization should not be relegated to a state issue because the effects of legalization cannot be isolated to individual states but quickly spread into neighboring, non-legal states.⁴⁵ States where marijuana is legal have failed miserably to keep marijuana within state lines. If marijuana is cheaper in Colorado than in Nebraska, there is a strong profit incentive to cross state lines (interstate commerce) to procure a cheaper product.⁴⁶ The federal government maintains a legitimate interest in overseeing interstate and intrastate commerce, especially regarding illicit activity like drug trafficking.

The federal government's interstate interest was expressed by the Founders in Article I, Section 8 of the U.S. Constitution. This federal interest has been reinforced by the Supreme Court of the United States many times, but the court has also upheld the federal government's legitimate interest in commerce happening within state lines. In *Gonzales v. Raich*, a 2005 case regarding federal enforcement of laws concerning state-legal medicinal marijuana plants in someone's yard, the Supreme Court affirmed 6 to 3 that federal law supersedes state law in enforcing drug statutes even in states where marijuana is legal.⁴⁷ Marijuana use in intrastate commerce was determined to be a part of the national marijuana market, and thus under "essential" federal regulation, because local use has an effect on the national market.

Since Colorado has legalized recreational use, marijuana has poured into nearby states⁴⁸, so much so, that neighboring states Nebraska and Oklahoma have sued Colorado for exacerbating their in-state illegal marijuana trafficking operations.⁴⁹ One does not need to travel to Colorado for Colorado marijuana, it exists in virtually every state.⁵⁰ The Colorado Attorney General's office said that legalization "has inadvertently helped fuel the business of Mexican drug cartels (in other states)... cartels are now trading drugs like heroin

for marijuana.”⁵¹ All of this translates to cost, and marijuana legalization does not serve as an income-generator for states. **In Colorado, one comprehensive study found that for every \$1 in revenue marijuana brings in, the state spends \$4.50 countering the effects.**⁵² **This number includes health care costs, traffic fatalities, DUIs, high school dropouts, and poison control calls.**⁵³

C. INTERNATIONAL CONCERN

While the U.S. should set its own policies based on its own best interests, drug control is not isolated to state or national interests but touches the international community at large. Article 1 §10 cl. 1 of the U.S. Constitution expressly says that states cannot interfere with federal diplomatic policy or make treaties with foreign nations; this power is solely delegated to the federal government.⁵⁴ The United States is currently a signatory to three international treaties that require participants to outlaw the distribution of various controlled substances, including marijuana.⁵⁵ Therefore, state legal marijuana programs risk interference with U.S. diplomatic policy.⁵⁶

Congress has the authority to prohibit marijuana growth and cultivation in furtherance of international treaty obligations, and states cannot interfere or determine their own policy.⁵⁷ A state blatantly ignoring or breaking an international treaty puts the U.S. at risk of giving the international community the impression that the U.S. is not interested in upholding its treaty agreements.⁵⁸

State marijuana policies undermine the position of U.S. drug enforcement efforts internationally. It is difficult for the United States to effectively advocate for other governments to interfere to stop drug trafficking committed by their own citizens while several states have legalized a substance the federal government actively tries to prevent from coming into the country. International drug trafficking funds other international crime, such as terrorism in Afghanistan, and its effects spillover into the international community. States cannot

unilaterally decide that marijuana is acceptable without undermining the U.S. on the international stage. Because state cultivation and distribution undermine international treaty agreements, state laws permitting it are arguably invalid under federal law.⁵⁹

D. FEDERAL, STATE AND LOCAL LAW ENFORCEMENT

The partnership between local, state, and federal law enforcement to curtail drug activity is crucial in stopping the trafficking of harmful, illicit drugs. The Drug Enforcement Agency (DEA) has jurisdiction across state and international lines, and when partnering with local law enforcement, can extend national jurisdiction to state law enforcement.⁶⁰ The DEA works with the U.S. military, foreign governments, and other agencies such as Immigration and Customs Enforcement, the Federal Bureau of Investigation, U.S. Customs and Border Protection, the Department of Homeland Security, the Internal Revenue Service, the Department of Health of Human Services, the Centers for Disease Control, and other sub-agencies under the Department of Justice.⁶¹ The DEA has 223 domestic offices and 86 foreign offices in 67 countries.⁶² The support the DEA provides to law enforcement and international enforcement to stop drug trafficking efforts is invaluable.

Because the black market, illicit growers, and drug trafficking organizations do not honor state laws or state lines, the jurisdictional aid that the DEA provides to local law enforcement is crucial. Furthermore, the international influence of the DEA is key in curtailing drug importation. The STATES Act ignores this reality.

Local, state, and federal law enforcement join together to share intelligence, expertise, resources, and funding all aimed at curtailing the drug trade.⁶³ These resources are irreplaceable for local law enforcement and without federal government involvement, states would be severely disadvantaged at best if not completely incapable to fight illicit

drug trafficking within their own state lines, and the national effort to curtail the drug trade would suffer.

Contrary to legalization proponents' claims, legalizing marijuana does not "free up" resources for law enforcement to focus on more serious crimes.⁶⁴ Instead, it forces law enforcement to spend a disproportionate amount of time responding to marijuana-related complaints such as public use and intoxication, state marijuana law violations, illegal grows, and drugged driving.⁶⁵

It is also often claimed that marijuana legalization decreases violent crime, but the states that legalized recreational use by 2015, Alaska, Colorado, Oregon, and Washington, have seen a 35% increase in murders and a 25% increase in assaults between 2013 and 2017, far outpacing the national trend.⁶⁶ It is impossible to know just how many of these crimes were marijuana-related without thorough research, but the popular talking point that legalization leads to less violent crime is wrong.

E. LEGALIZATION'S BLACK MARKET BOOM

Not only would the STATES Act legalize marijuana on the federal level, but it would also shield the marijuana industry in states that have liberalized drug policies, hindering the enforcement of federal law within that state. Legal recreational use states provide exceptional cover for criminal organizations who want to exploit addiction for profit.

In 2018, NBC News published an extensive piece on foreign cartels who take advantage of recreational legalization in Colorado.⁶⁷ According to federal and local officials, "Chinese, Cuban and Mexican drug rings have purchased or rented hundreds of homes and use human trafficking to bring inexperienced growers to the U.S. to tend them ..."⁶⁸ These cartels target legalized states to shield black market operations in a legal environment, grow more marijuana than the entire state could consume, ship marijuana out of the state to states where recreational use is illegal, and then turn a

massive profit. **The federal government should not make it easier for foreign drug cartels to flourish in the United States.**

The Drug Enforcement Administration's 2018 National Drug Threat Assessment repeatedly states that "traffickers are transporting their marijuana across states lines, into states where it is not legal to grow it, and/or the laws are different."⁶⁹ According to the annual DEA report, marijuana that is grown in the United States is superior in quality to marijuana produced in Mexico, and thus is in higher demand.⁷⁰ In 2018, the DEA found that the majority of marijuana in the U.S. is illicitly produced on United States soil by state-licensed medical growers and drug trafficking organizations.⁷¹

Legalization in a high-tax, highly regulated environment like that of California, Oregon, and Colorado does not eliminate the black market, rather, according to the DEA, enables it.

Unsurprisingly, the overgrowth of the black market in legalized states is not isolated to Colorado. A report from the Oregon State Police found that the black market in Oregon has skyrocketed since the state legalized marijuana, including significant trafficking operations from Oregon to other states that have not legalized marijuana and to foreign countries.⁷² In 2019, California Governor Gavin Newsom asked for help from the federal government to eradicate the state's massive black market.⁷³ The California State Legislature considered a tax break for legal operations so that they can compete with black market prices.⁷⁴ Legalization in a high-tax, highly regulated environment like that of California, Oregon, and Colorado does not eliminate the black market, rather, according to the DEA, enables it.⁷⁵ However, drug cartels are always going to have an interest in marijuana trafficking, whether or not it is legal in the U.S.

F. ADVERTISING

The marijuana industry is engaged in extensive interstate commerce activity on many fronts, including advertising. The industry already advertises heavily from legal municipalities to out-of-state markets in order to solicit marijuana tourists, to source growing and processing equipment, and to recruit employees.⁷⁶

The STATES Act allows marijuana corporate giants to advertise high potency products on television and social media, which targets children. The marijuana industry is already sidestepping advertising regulations that exist in legal states aimed at protecting children by advertising via Instagram influencers, a method that has proven effective with a younger demographic.⁷⁷ Seventy-two percent of American teenagers use Instagram and 95% have or have access to a smartphone.⁷⁸

In the 2009, the Federal Trade Commission banned the advertisement of flavored tobacco because of its actual or perceived targeting of children.⁷⁹ However, the marijuana industry markets to consumers using popular celebrities and packages edibles in child-friendly forms such as candy, gummies, ice cream, fudge, and gummy bears.⁸⁰ The STATES Act does nothing to curb or regulate this advertising. With the nature of the internet, it is impossible to guarantee this advertising will only occur in legalized states to of-age adults.

INVESTORS WIN; COMMUNITIES LOSE

The STATES Act seeks to exempt marijuana from the enforcement and oversight of the Controlled Substances Act, meaning that marijuana would be legal on the federal level and its operations open to banking activity. Banks cannot finance illegal activity, also known as money laundering.

Because of marijuana's current federally illegal status, banks are technically prohibited from

being involved in marijuana businesses. Although some state banks do finance state-legal marijuana businesses, they open themselves to liability and prosecution under the Controlled Substances Act. Bank involvement can vary from granting a marijuana business a small business loan to open a dispensary, to allowing a it to accept credit cards, to granting the business a bank account.

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The STATES Act is not narrowly tailored to apply exclusively to small businesses or transactions. It is intentionally broad and allows for an influx of Wall Street investment which would no doubt cause the industry's growth to skyrocket. Furthermore, the STATES Act provides no protective measures that assure drug trafficking organizations will be unable to access the U.S. banking and financial system. Allowing the marijuana industry, and the bad actors that will always accompany it, access to the U.S. financial and banking system would harm to the integrity of the U.S. financial system and would possibly lead to international consequences.

A. MARIJUANA AND THE BANKING INDUSTRY— ILLEGALLY INTERTWINED

The current landscape regarding marijuana and its involvement with the banking system is complex. On February 14, 2014, the Financial Crimes Enforcement Network (FinCEN) issued guidance to “clarify Bank Secrecy Act expectations for financial institutions seeking to provide services to marijuana-related businesses.”⁸¹ In informal guidance, FinCEN clarified that financial institutions can provide

certain services to marijuana-related businesses on a case-by-case basis, as determined by the financial institution.

According to the FinCEN memo, if a financial institution wishes to associate itself with a marijuana business, it is required to take specific steps to assess the risk of providing services to marijuana businesses.⁸² These steps include verifying that the business is aligned with state law, reviewing the business's state license, and requesting business information from licensing and enforcement.⁸³ The institution must also understand the normal type of activity for the business (products offered, types of customers, etc.), must monitor publicly available sources for any infractions, monitor suspicious activities, and regularly refresh information obtained.⁸⁴ The institution is also required to consider whether the business implicates a Cole Memo priority or violates state laws.⁸⁵

If an institution determines the risks are worth the business, it is required to file suspicious activity reports (SARs) correlating with every marijuana transaction since activities surrounding marijuana remain illegal on the federal level.⁸⁶ FinCEN cannot make marijuana legal or change its criminal status, thus SARs that normally flag suspicious or potentially illegal transactions are still legally required. The FinCEN guidance created tiers of SARs for marijuana-related activities, but this creates a mountain of paperwork for a bank who wishes to operate in this sphere.⁸⁷

FinCEN sidestepped Congress and issued informal guidance that was not only gross overreach from an agency but was a huge departure in federal policy and enabled federal money laundering.⁸⁸ This is ironic in light of FinCEN's mission to combat money laundering. This guidance did not undergo the federal rulemaking process and because it is worth as much as the paper it is written on, banks are still at risk of federal prosecution for being involved in federally illegal marijuana business.

On April 1, 2014, Senators Grassley (R-Iowa) and Feinstein (D-California), co-chairs of the Senate Caucus on International Narcotics Control, sent a letter to FinCEN in response to this memo.⁸⁹ The Senators pointed out that the purpose of FinCEN is

to combat money laundering and safeguard the U.S. financial system and this memo that served as a green light for money laundering undermined that mission.⁹⁰ The letter explains that following this guidance may expose financial institutions to civil or criminal liability and until marijuana's legal status is changed, selling marijuana, laundering marijuana proceeds, and aiding and abetting those activities remains illegal.⁹¹ The FinCEN guidance intended to clarify marijuana and the banking industry role in marijuana business operations, but it created uncertainty surrounding the issue.⁹²

Although the Cole Memo was rescinded, the FinCEN guidance was not rescinded and remains in effect.⁹³ Some financial institutions, primarily state-chartered ones, have accepted deposits from marijuana related businesses.⁹⁴ However, not only are there serious, time-consuming reporting burdens, but banks are still open to federal prosecution and civil forfeiture.⁹⁵ Although there is a regulatory and financial burden placed on banks who choose to operate with marijuana businesses, banks charge substantially higher fees, so they recoup losses.⁹⁶ Many banks see marijuana as a money-making opportunity, but they do compromise their legal status by participating in illegal activity.

The STATES Act seeks to remedy this situation, but because marijuana is still a Schedule I drug, it will continue to create ambiguity and uncertainty surrounding this issue. By exempting marijuana from the enforcement and oversight of the Controlled Substances Act, marijuana will be legal on the federal level; therefore, its operations would be open to banking activity. However, **this would be the first time the United States banking industry was opened to Schedule I drug operations.**

If entities choose to legalize other drugs, as we have seen in Denver⁹⁷ and Oregon⁹⁸ regarding the Schedule I drug magic mushrooms, would banks accept those funds as well? Would SARs reports still be necessary? The STATES Act fails to address these and so many other problematic, logistical, and legitimate questions.

B. OPENING THE BANKING INDUSTRY TO MARIJUANA ENABLES DRUG CARTEL ACTIVITY

Foreign drug trafficking organizations, or cartels, are willing to exploit what is legal to accomplish what is illegal. Currently, they exploit states where marijuana is legal by setting up their own marijuana operations under the guise of U.S. state legality, exacerbating the illicit market.⁹⁹ The STATES Act provides no assurance that drug trafficking organizations would be unable to access the banking system for marijuana-related businesses.

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In a letter to the Senate Banking Committee dated July 19, 2019, former Directors of the Office of National Drug Control Policy and former Administrators of the Drug Enforcement Administration voiced their concern that opening the banking industry to marijuana operations would enable cartel activity:

“Because cash made from the sale of marijuana looks the same regardless of what it was used to pay for, it will be extremely difficult for banks to know whether large bundles of cash presented for deposit were made from the sale of marijuana rather than from the sale of heroin, fentanyl, or methamphetamine.

“In short, [opening the banking industry to marijuana operations] could inadvertently allow cartels to bring into banks duffel bags of cash made from the sale of those illicit drugs that are killing tens of thousands of Americans every year.”¹⁰⁰

Currently, banks must report cash deposits that exceed \$10,000 USD to the federal government in the form of a Suspicious Activity Report (SARs).¹⁰¹

In written Congressional testimony, Ernest Martinez, the Director at Large of the National Narcotic Officers’ Associations’ Coalition (NNOAC) and Lieutenant in the Denver Police Department, explains that these current measures help minimize money laundering and black market investment. If banking was open to the marijuana industry, Lt. Martinez testifies how cartel activity would be enabled:

“As one possible example, a cartel would drop off backpacks of cash to a dispensary for deposit, possibly in excess of \$10,000 per transaction, which would be a huge advantage over current constraints. The dispensary would deposit the money in their bank account, and then bill a shell company for ‘security services,’ ‘cleaning services,’ or some other plausible service that would never be performed. Now the money has been returned to cartel control and can be transferred electronically.”¹⁰²

Congressman Rutherford (R-Florida), a former sheriff, spoke against a marijuana banking amendment during a House Appropriations markup in 2018. His concern was that opening the banking industry to marijuana operations would benefit drug trafficking organizations (cartels):

“[C]artels face two problems: 1, bringing drugs into the country; across our border, and 2, moving large amounts of cash back across the border. [The second] is an opportunity to intervene in the drug trade affecting our country: ... DOJ has begun to see a lot more attempts by drug cartels to actually move their money through wire transfers and banking operations, which is why DEA and others have begun to really focus on that as an element [of curtailing the drug trade].”¹⁰³

Canada, which legalized recreational marijuana nationwide in late 2018, has already seen offshore investments infiltrate their marijuana operations, some with ties to organized crime.¹⁰⁴ Opening up the banking system to marijuana operations will no doubt

abet foreign drug trafficking operations in the United States and abroad.

C. MARIJUANA INVESTMENT

Marijuana is a multibillion-dollar a year industry and growing. The \$3 billion forecast in annual tax revenue just in California alone exceeds the \$84.7 million and \$366 million excise taxes collected on cigarettes and alcohol, respectively.¹⁰⁵ Although this forecast is optimistic, there is money to be made. By legalizing marijuana on the federal level, the financial industry would have access to invest in this previously underground industry which would lead to unprecedented Wall Street investment.¹⁰⁶

Former big tobacco executives are already aggressively investing in marijuana,¹⁰⁷ and former big tobacco companies have already invested in Canadian legal marijuana markets.¹⁰⁸ Allowing the tobacco industry, with its proven record of complete disregard for public health and safety, access to Wall Street marijuana investment on a massive scale would all but assure that marijuana is the next big tobacco.¹⁰⁹ State legal marijuana markets have already seen immense investment from tobacco titans like The Altria Group's Phillip Morris, the maker of Marlboro.¹¹⁰

The marijuana industry has also hired former big pharma executives and former influential politicians. John Stewart, the former CEO of Purdue Pharma, maker of OxyContin, is now a marijuana industry CEO.¹¹¹ Avid tobacco user and former Speaker of the House, John Boehner, is now "all in" on marijuana legalization and actively lobbies for the marijuana industry even though he was an ardent opponent during his time as Speaker.¹¹² Former Speaker Boehner is estimated to make \$20 million if the marijuana market is opened to investors.¹¹³ This investment will only continue to grow with the legitimization of marijuana via the passage and implementation of the STATES Act.

Opening the banking industry to marijuana operations abets Federal drug trafficking,¹¹⁴ irreparably harms the integrity of the U.S. banking system, enables the growth of the marijuana industry, and would assure a boom in marijuana investment. Not only would the

STATES Act exacerbate the current problems that marijuana-legal states are facing, it would spread these issues nationally.

MARIJUANA'S NEGATIVE IMPACT ON HEALTH

By exempting marijuana from the federal enforcement and oversight of the Controlled Substances Act, the STATES Act must conclude that marijuana is completely harmless with no potential for abuse. However, decades of research say the opposite. Furthermore, **if marijuana was treated as medicine, the determination for its safety and efficacy would be solely done by the FDA, not by states. However, marijuana is not FDA approved to treat anything, and legitimizing marijuana use is detrimental to public health.**

People deserve compassionate care, but the promises made by the marijuana industry are unproven and may cause patients to put their hope in marijuana instead of other FDA approved treatments. Marijuana legalization has had a documented negative impact on mental health, public health, violence, adolescent behavior and development. The STATES Act ignores the scientific evidence and provides no guardrails for health or means to punish bad actors.

Tetrahydrocannabinol (THC), the active ingredient in marijuana that produces a high, also causes changes to the human brain. When THC interacts with the brain, it activates certain receptors, also known as cannabinoid receptors, which are located in three parts of the brain: the cerebral cortex, cerebellum, and limbic system. The cerebral cortex determines intelligence, personality, motor function, sensory information, and language processing¹¹⁵; the cerebellum receives sensory information from the rest of the body and regulates motor movements¹¹⁶; and the limbic system determines our behavioral and emotional responses which include eating and fight or flight responses¹¹⁷.

Marijuana overdose is unlikely and with a few exceptions, does not result in death because the body only has so many cannabinoid receptors. **This does not mean marijuana is safe or more safe than drugs which can cause an immediate overdose; marijuana use and overuse is harmful.**¹¹⁸ Even though ingesting too much marijuana does not shut down the brain's regulation of breathing, such as the body's response to an opioid overdose,¹¹⁹ the brain and the body is affected by marijuana use.

A. MARIJUANA'S IMPACT ON MENTAL HEALTH

Marijuana's connection to mental illness and violence has been researched and documented, but there is still work to be done. This evidence is especially disturbing in light of the prevalence of users who, instead of seeking professional help or addressing underlying issues, self-medicate legitimate mental health concerns with marijuana.

Marijuana is advertised as a safe drug that produces no negative side effects; however, that is not aligned with the scientific evidence. A 2017 National Academy of Medicine research report titled "The Health Effects of Cannabis and Cannabinoids" represented over a year's work of research compiling from an impartial committee of doctors and researchers who examined thousands of studies and papers. The Academy found strong evidence that marijuana causes schizophrenia.¹²⁰ It also concluded there is some evidence that it worsens bipolar disorder, increases the risk of anxiety, depression, and social anxiety disorder. They found that "the higher the use, the greater the risk."¹²¹

B. MARIJUANA AND VIOLENCE

Although popular wisdom says that marijuana merely produces a mellow, hungry disposition, researchers have found a strong link between marijuana use or abuse and violence more strongly than with alcohol, in many cases.¹²² A 2013 survey published in the *Journal of Interpersonal*

Violence of 12,000 high school students across the U.S. showed that "those who used cannabis were more than three times likely to become violent as those who didn't, surpassing the risk of alcohol use."¹²³ A 2016 paper in *Psychological Medicine* examined marijuana use and criminal behavior over more than a 40-year period, surveying use in British males at ages 18, 32, and 48.¹²⁴ The paper found, at every age, marijuana use was associated with a ninefold increase in violent behavior after adjusting for other variables.¹²⁵

A 2013 paper in the *American Journal of Psychiatry* examined non-vehicular homicides in Alleghany County, Pennsylvania, between 2001 and 2005.¹²⁶ It found that 90 of the 278 defendants had been diagnosed with cannabis dependence or abuse, compared to 65 with alcohol dependence or abuse.¹²⁷ Other studies have found similar findings including a 2017 paper in *Social Psychiatry and Psychiatric Epidemiology* that surveyed 2,000 men in Britain and 4,000 in China, a 2018 paper on patients entering substance abuse treatment in Brazil, a 2017 paper on firearm violence, a 2015 study on veterans with PTSD, a 2009 paper on emergency room patients in Michigan, and a 2004 paper on youth offenders in Pittsburgh.¹²⁸

Recent research shows the link between marijuana and violence also extends to relationships.¹²⁹ A 2018 study in *Translational Issues in Psychological Science* showed that among 269 men who were court-ordered to treatment for domestic violence, marijuana use was associated with physical, psychological, and sexual violence, even after accounting for alcohol abuse.¹³⁰ A 2017 analysis of 11 previous studies in *Drug and Alcohol Dependence* found that marijuana use was associated with a 45% increase in adolescent and young adult dating violence, compared to a 70% increase for alcohol abuse.¹³¹ A 2012 paper in the *Journal of Interpersonal Violence* examined data from a federal study of 9,421 American teenagers over a 13-year period found that marijuana use doubled the risk of committing domestic violence by age 26, even after accounting for other factors.¹³²

The research on marijuana use and violence exists but is pushed aside because it does not fit the narrative pushed by legalization advocates. In the words of author and journalist Alex Berenson, “Marijuana produces psychosis, and psychosis produces violence.”¹³³ **The legalization of marijuana, particularly for perceived “medical” reasons has created a perception that marijuana has received a government-approved safety seal amongst the population, but studies have repeatedly found that the higher the use, the greater the risk.**¹³⁴

C. MARIJUANA’S HARM TO DEVELOPING BRAINS

Marijuana’s harmful effects are especially concerning for children and teens, and the marijuana of today is more THC (the psychoactive compound in marijuana responsible for a high and psychoactive effects) potent than ever before, and methods of consumption are adapting to accommodate higher THC potency.¹³⁵

In August 2019, the Surgeon General issued a warning on marijuana and the developing brain, the office’s first warning on marijuana in almost 40 years.¹³⁶ Surgeon General Jerome Adams pointed out that marijuana has changed over time and THC potency is significantly higher than decades ago.¹³⁷ The advisory states:

“The risks of physical dependence, addiction, and other negative consequences increase with exposure to high concentrations of THC and the younger the age of initiation. Higher doses of THC are more likely to produce anxiety; agitation, paranoia, and psychosis. Edible marijuana takes time to absorb and to produce its effects, increasing the risk of unintentional overdose, as well as accidental ingestion by children and adolescents. In addition, chronic users of marijuana with a high THC content are at risk for developing a condition known as cannabinoid hyperemesis syndrome, which is marked by severe cycles of nausea and vomiting.

This advisory warned against marijuana use during pregnancy and marijuana use during adolescence because of its impact on the developing brain.

Vaping, which is the most common consumption form of tobacco among youth in the U.S., is quickly becoming one of the most common methods of marijuana consumption as well.¹³⁸ A 2018 survey found that 2 million teens reported vaping¹³⁹ marijuana, and vaping amongst all marijuana users has skyrocketed.¹⁴⁰ The DEA reports that 25% of high school students who used marijuana in 2017 vaped it.¹⁴¹ Vaping delivers a more concentrated effect than traditional smoking, and researchers at Johns Hopkins University found that those who vaped marijuana reported more powerful and dangerous effects of impairment.¹⁴² This is no surprise when THC concentrates used for e-cigarettes and vape pens can be up to 80% potent.¹⁴³ These concentrates are easily concealable, compactable, and the DEA estimates that their use will continue to increase.¹⁴⁴

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In September 2019, the CDC declared a vaping crisis after several people died and several thousand became ill after vaping.¹⁴⁵ Upon further investigation, the CDC found that THC was found in 77% of the products that produced harmful effects and death, including one Oregon man who died after vaping THC that was purchased at a state-legal dispensary.¹⁴⁶ The CDC warned consumers to stop using THC vaping products until these causes were more clear.¹⁴⁷

Not only is the prevalence of marijuana use, specifically heavy use, increasing, but THC potency is far from what it used to be.¹⁴⁸ **Average THC potency in a marijuana cigarette (joint) has risen from 0.5-3%**

30 years ago¹⁴⁹ to 25% potency today.¹⁵⁰ Incredibly, the STATES Act allows for the targeted advertising and sale of 99% potency concentrates marketed in kid friendly marijuana gummies, ice creams, and sodas.¹⁵¹

Edible products that contain THC, commonly known as edibles, have recently come under scrutiny¹⁵² for causing surges¹⁵³ in emergency room visits in legalized states and have been shown to increase¹⁵⁴ the risk of psychosis. *The New York Times* reported on the potency and danger of edibles and the research of emergency room Doctor Andrew Monte:

*“... the only deaths in Colorado that have been definitively attributed to cannabis involved edibles, and those deaths were surprisingly violent. In all three incidents, including a murder and a suicide in 2014 and another suicide in 2015, the pot users exhibited extremely erratic behavior after consuming edibles, according to news reports and trial testimony.”*¹⁵⁵

It is more difficult for a user to gauge the dosage of an edible because the effects are delayed, often for several hours.¹⁵⁶ This phenomenon usually causes over consumption which can lead to behavior that a user has not experienced while smoking marijuana.¹⁵⁷ Edibles are also more likely than inhaled marijuana to cause severe intoxication, psychosis, GI distress, and cardiovascular issues.¹⁵⁸ Legalizing marijuana, especially in these high-potency forms common today is an irresponsible live experiment on the youth of America.

D. THE HEALTHCARE MYTH AND COST

The costs of marijuana use on the health care system cannot be easily dismissed, and the use of marijuana as a health care remedy is questionable at best. Marijuana has a high potential for abuse and daily or near daily marijuana users are 25-50% more likely to develop cannabis use disorder.¹⁵⁹ In Colorado, it cost \$31,448,905.88 to treat cannabis use disorder in 2017 alone.¹⁶⁰

A crucial element in the strategy of legalization proponents is to paint marijuana as a low-risk, natural medicinal tool. This strategy has worked according to polls, the use of marijuana for medical reasons is favored by most Americans, and most think medicinal marijuana should be legalized.¹⁶¹ However, **marijuana is not FDA approved to treat anything, and there is no current acceptable medical use.**¹⁶²

A drug has a “currently accepted medical use” only if all of the following five criteria are satisfied:

1. The drug’s chemistry is known and reproducible
2. There are adequate safety studies
3. There are adequate and well-controlled studies proving efficacy
4. The drug is accepted by qualified experts
5. The scientific evidence is widely available¹⁶³

Marijuana does not meet any of the required elements for having a “currently accepted medical use.”¹⁶⁴ In 2016, the DEA denied a petition to re-schedule marijuana for medical use based on these facts.

*“[T]he drug’s chemistry is not known and reproducible; there are no adequate safety studies; there are no adequate and well-controlled studies proving efficacy; the drug is not accepted by qualified experts; and the scientific evidence is not widely available... the known risks of marijuana use have not been shown to be outweighed by specific benefits in well-controlled clinical trials that scientifically evaluate safety and efficacy.”*¹⁶⁵

Advocates have tried for decades to get marijuana removed from the CSA and treated as medicine, but this can only be accomplished via the democratic process because the science required for marijuana to be used as a medicine does not exist.

Advocates have tried for decades to get marijuana removed from the CSA and treated as medicine, but this can only be accomplished via the democratic process because the science required for marijuana to be used as a medicine does not exist.

If there is some medicinal benefit, marijuana should be treated as other controlled substances and provided with the seriousness a drug with such risks deserves. Furthermore, the FDA's role in determining what drugs are safe and effective certainly implicates a federal role in the regulation of marijuana. The passage of medicinal marijuana use is always a precursor to open up to its recreational use. No other medicine is smoked or is consumed recreationally like marijuana is consistently promoted, and smoked marijuana would never meet the necessary criteria for medicinal use.¹⁶⁶ Except for a few rare conditions, neither cannabis nor THC has ever been shown to work in randomized clinical trials in the United States or abroad.¹⁶⁷

Marijuana cannot be prescribed by any physician because it is not FDA approved to treat any medical condition.¹⁶⁸ Most patients are shocked to find that their doctors will not prescribe them a medical marijuana card, even if they live in a legalized state. There are doctors who work exclusively in the medical marijuana card business, and it is a business, churning out cards for any illness for a fee.¹⁶⁹ Marijuana card doctors are strikingly similar to the pain clinic "pill mills" that became so popular at the peak of the opioid epidemic—these doctors often have no relationship to the patient other than providing an avenue to obtain a controlled substance for cash.

Cannabis has worked as a moderate short-term pain reliever in some small studies, but it is usually compared to a placebo rather than another pain reliever like ibuprofen or acetaminophen.¹⁷⁰ The Department of Veterans Affairs commissioned a study that found marijuana has little to no pain efficacy and "[a]mong general populations, limited evidence suggests that cannabis is associated with an

increased risk for adverse mental health effects."¹⁷¹ There is no widely-available or accepted medical literature that shows "any benefit for pain with dispensary cannabis in common pain conditions."¹⁷²

E. CANNABIDIOL (CBD)

A distinction should be drawn between cannabidiol (CBDⁱⁱ), a cannabinoid found in hempⁱⁱⁱ and in trace amounts is found in some marijuana varieties and marijuana as it is sold in dispensaries. CBD, unlike THC, does not get users high, but most marijuana consumed today has a disproportionately higher amount of THC and almost no CBD.¹⁷³ CBD is an entirely different conversation and is derived from a specific strain of marijuana that is typically not sold in dispensaries, or it is derived from hemp.¹⁷⁴

Industrial hemp was legalized and de-scheduled in the 2018 Farm Bill, The Agriculture Improvement Act of 2018; however, neither hemp or CBD have been FDA approved for human consumption.¹⁷⁵ **Hemp and marijuana are virtually indistinguishable to the naked eye, and hemp legalization has complicated law enforcement efforts to distinguish between legal hemp and illegal marijuana in the field.**¹⁷⁶ The DEA and Congress are currently working on a solution to this problem. The Senate Majority Leader, Mitch McConnell, in his floor speech touting the benefits of industrial hemp, made it a point to not conflate hemp with its "illicit cousin" marijuana.¹⁷⁷ Much like hemp and marijuana, CBD and THC are frequently and wrongfully conflated, further confusing the public and muddying the conversation.

ⁱⁱDelta-9 Tetrahydrocannabinol, or THC, is the component of marijuana that produces a psychoactive response, or a high. Cannabidiol, or CBD is another chemical element in cannabis variety plants that has shown some medicinal promise and does not get users high. According to the DEA, CBD is typically ingested in the form of oils and oil-filled capsules and is extracted from marijuana that is low in THC and high in CBD. United States of America, Department of Justice, Drug Enforcement Administration. (2018). 2018 National Drug Threat Assessment(pp. 77-88). Today, marijuana, including most of so-called medical marijuana has a high THC concentration and a low CBD concentration Berenson, Alex. (2019). Tell Your Children: The Truth about Marijuana, Mental Illness, and Violence. (pp. xviii). New York, New York: Free Press.

Hemp is a member of the cannabis family and is an industrial product that contains a higher concentration of CBD and legally, must have a concentration of THC below 0.3% (dry weight). Hemp is used in food, cosmetics, supplements, textiles, fabrics, and other industrial products. Marijuana is used recreationally. Johnson, R. (2019, March 22). Defining Hemp: A Fact Sheet (United States of America, Congressional Research Service). Retrieved from <https://fas.org/sgp/crs/misc/R44742.pdf>.

Much of the CBD on the market is derived from industrial hemp and the regulatory framework surrounding hemp and hemp-derived CBD is currently under review.¹⁷⁸ CBD has shown some legitimate medical purpose in some studies, but the research is still developing, and isolated CBD research is in its infancy. Some recent evidence shows that CBD causes liver damage, can affect the metabolism of other drugs, and is not the cure-all that many manufacturers advertise.¹⁷⁹ In November of 2019, FDA issued warnings to fifteen companies illegally selling CBD and stated that CBD is not generally recognized as safe, is not FDA approved, is not harmless, and consumers should avoid it until more is known about the effects.¹⁸⁰

In 2018, the FDA approved the first marijuana-derived CBD product for narrow use in treating two rare seizure disorders.¹⁸¹ The approval of this drug, Epidiolex, is proof that **not only is Schedule I research is possible, but the process works.** Epidiolex is developed by GW Pharmaceuticals, a British biotech company whose early investors¹⁸² include the late Peter Lewis, a millionaire marijuana smoker who donated approximately \$60 million in his lifetime to pro-marijuana legalization efforts.¹⁸³ Make no mistake, the medical marijuana push is not a movement aimed at finding more natural cures; there are significant financial interests at stake.

F. MARIJUANA IS NOT THE SOLUTION TO THE OPIOID EPIDEMIC

Almost two years after the U.S. Department of Health and Human Services (HHS) officially declared the overuse of opioid painkillers a national crisis in 2018, policy makers are working to understand what led to the crisis, how to help those who are suffering from addictions, and how to prevent another drug crisis. Its complexity cannot be overstated. The opioid crisis was the perfect storm of greed, reckless prescribing based on no substantial scientific evidence, exploitation, policy failure, and shame. Policymakers will dissect this complex crisis for years to come, but we can learn from our mistakes now.

Opioids promised to be a non-addictive, effective treatment of short and long-term pain; a true miracle drug. Much of this narrative was driven by a one paragraph letter published as a letter to the editor in the *New England Journal of Medicine* in 1980. Doctors Jane Porter and Herschel Jick touted hospital patients as proof that addiction was rare in patients prescribed opioid painkillers who had no history of addiction.¹⁸⁴ This five sentence observation has been widely cited by pharmaceutical sales representatives, medical research articles, and doctors as proof that opioids were non-addictive.¹⁸⁵

Marijuana also promises to be a non-addictive, effective treatment of short and long-term pain. More than that, it promises to treat epilepsy, anxiety, nausea, sleep problems, and even autism, with virtually no side effects.¹⁸⁶ A true miracle drug! Unfortunately, many of these claims are anecdotal at best and conjecture at worst. Research does not support marijuana as an effective alternative to opioids.

The United States is facing a pressing opioid abuse epidemic that takes 130 lives every day.¹⁸⁷ Marijuana is not the answer, and marijuana users don't use fewer opioids.¹⁸⁸ In fact, in a NIH study of more than 30,000 American adults, researchers found that marijuana misuse is associated with an increased risk in prescription opioid abuse.¹⁸⁹ These marijuana users were more than twice as likely to

move to prescription opioids.¹⁹⁰ According to the CDC, marijuana users are three times as likely to become addicted to heroin, and more than 90% of heroin users report a prior history of marijuana use.¹⁹¹

A 2018 study published in the *American Journal of Psychiatry* examined the relationship between cannabis use and non-medical prescription opioid abuse.¹⁹² It found that cannabis use “appears to increase rather than decrease the risk of developing nonmedical prescription opioid use and opioid use disorder.”¹⁹³ A recent study of 57,000 people showed that “medical marijuana users are more likely to use prescription drugs medically and non-medically, and included pain relievers, stimulants, tranquilizers, and sedatives.”¹⁹⁴ Not all marijuana users become heroin addicts, but almost all heroin addicts started as marijuana users.

Patients who used cannabis in conjunction with opioid pain relievers were actually worse off than those who did not.

A large Australian study has recently called marijuana’s effectiveness into question when addressing long-term pain. This study examined 1514 patients with non-cancer chronic pain over several years who had also been prescribed opioids for pain relief. The researchers found that, “[p]eople who used cannabis had greater pain and lower self-efficacy in managing pain, and there was no evidence that cannabis use reduced pain severity or interference or exerted an opioid-sparing effect.”¹⁹⁵ Patients who used cannabis in conjunction with opioid pain relievers were actually worse off than those who did not.¹⁹⁶

It has been misreported that medical marijuana legalization is associated with a decreased risk for opioid deaths. Opioid deaths are rising as fast or faster in states that have legalized medical cannabis, and some numbers suggest a 52% opioid death rate increase in states with any form of legal marijuana versus those with no form of legal marijuana.¹⁹⁷ States with higher marijuana use not

only have more opioid deaths, but significantly more drug use overall.¹⁹⁸

The overabundance of opioid painkillers did not deter drug cartels from importing heroin into the U.S. The notorious Mexican drug lord, Joaquín (El Chapo) Guzmán, saw the abundance of prescription opioids and pushed more heroin and fentanyl into the U.S. knowing his product would be better, cheaper, and easier to obtain. This proved to be correct and has been a huge driving force in the opioid crisis. Drug cartels are not going to accept a loss on marijuana, either. As we have seen in Colorado, cartels exploit legal states and operate under the guise of legalization. Their business model adapts to the market fluctuations with absolutely no regard to regulations states impose.

The opioid crisis has shown us that the accessibility of legal, government-regulated drugs does not eliminate addiction or the dangers that surround addiction. **Substance abuse and addiction is a complex disease and government intervention and regulation does not exempt people from its consequences. Policymakers would be foolish to rush into legalizing and increasing the access of another “miracle drug,” especially against the FDA and DEA’s judgment, just because it is popular or because of financial interests.**

CONCLUSION

In her book **To Kill a Mockingbird**, Harper Lee states that “people generally see what they look for and hear what they listen for...”¹⁹⁹ Pro-legalization proponents of marijuana look for data that backs up their position while conveniently ignoring thousands of studies, data, and compelling evidence that scream of the dangers associated with marijuana use. The evidence, at the very least, suggests the U.S. should slow down the push toward legalization and consider the long-term consequences for future generations.

Although the STATES Act sounds like an appealing compromise, especially for states’ rights advocates and proponents of small government, it is logically inconsistent and dishonest. **Unless one**

concedes that states are responsible for setting their own drug policies surrounding all illicit substances, the states' rights argument cannot be made. The STATES Act would hurt state and federal efforts to curb illegal drug activity, irreparably damage the U.S. banking system, and compromise the health of the American public.

The marijuana industry has invested significant time and resources on specific messaging strategies aimed to garner as much support for incrementalism as possible. Both major strategies framing marijuana control as a states rights issue and the use of marijuana as a healthcare remedy bring parties previously hesitant about marijuana legalization into the fold. Both are crucial steps to their overall goal of full legalization, with as little oversight as possible. The marijuana industry has spent millions lobbying and drafting this legislation for their own personal gain, all at the expense of public health, safety, justice, and common sense.²⁰⁰

Pushing legislation like the STATES Act that further advances the legalization trend is reckless.

The STATES Act is not about states' rights, it is a blatant attempt to deceive the public to legalize marijuana on the federal level in the name of state autonomy. In spite of marijuana's negative, documented public health outcomes, the STATES Act propels the U.S. into a real-time human experiment on marijuana use, one we already know will be harmful, and should be opposed.

ENDNOTES

¹ 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 495-503 (2018).

² *Ibid.* pp. 495-503

³ Drug Enforcement Administration, Department of Justice; Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53767 (Aug. 12, 2016) (codified at 21 C.F.R. Pt. II).

⁴ Smart Approaches to Marijuana (SAM). (2019, June 06). Comprehensive Report on Impact of Marijuana Legalization. Retrieved June 26, 2019, from <https://learnaboutsam.org/comprehensive-report-on-impact-of-marijuana-legalization/>

⁵ Smart Approaches to Marijuana. (2019, February 8). *Senator Ron Wyden Introduces Bill to Legalize Marijuana; Big Tobacco Rejoices*[Press release]. Retrieved from <https://learnaboutsam.org/senator-ron-wyden-introduces-bill-to-legalize-marijuana-big-tobacco-rejoices/>

⁶ U. S. Constitution, Amendment 10

⁷ 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 495-503 (2018).

⁸ 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 495-503 (2018).

⁹ 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 495-503 (2018).

¹⁰ 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 495-503 (2018).

¹¹ 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 495-503 (2018).

¹² Controlled Substances Act of 1970, 21 U.S.C. 13 § 801 et seq.

¹³ *Ibid.* pp. 495-503

¹⁴ *Ibid.* pp. 495-503

¹⁵ *Ibid.* pp. 495-503

¹⁶ 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 495-503 (2018).

¹⁷ Drug Enforcement Administration, Department of Justice; Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53767 (Aug. 12, 2016) (codified at 21 C.F.R. Pt. II).

¹⁸ Drug Enforcement Administration, Department of Justice; Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53767 (Aug. 12, 2016) (codified at 21 C.F.R. Pt. II).

¹⁹ *Ibid.*

²⁰ Controlled Substances Act of 1970, 21 U.S.C. 13 § 811 et seq.

²¹ *Ibid.*

²² Controlled Substances Act of 1970, 21 U.S.C. 13 § 811(c)

²³ Controlled Substances Act of 1970, 21 U.S.C. 13 § 812(b)(1)

²⁴ Controlled Substances Act of 1970, 21 U.S.C. 13 § 812(b)(2)

²⁵ Controlled Substances Act of 1970, 21 U.S.C. 13 § 812(b)(3)

²⁶ Controlled Substances Act of 1970, 21 U.S.C. 13 § 812(b)(4)

²⁷ Controlled Substances Act of 1970, 21 U.S.C. 13 § 812(b)(5)

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³⁶ Ibid.

³⁷ Conflicts Between State and Federal Marijuana Laws: Hearing before the Committee on the Judiciary, U.S. Senate, 113th Cong. (2013) (Testimony of Senator Charles Grassley of Iowa).

³⁸ Grassley, C. E., & Feinstein, D. (2014, April 1). [Letter to Jennifer Shasky Calvery]. Washington, DC.

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