

ADDRESSING MARIJUANA COMMERCIALIZATION AMID STATE-LEVEL
LEGALIZATION EFFORTS

by
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degree of Master of Public Management

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ABSTRACT

Several states have acted to defy federal law and legalize the commercialization of marijuana. The resulting conflict between state and federal law represents a constitutional and public health crisis which this paper proposes should be addressed by the United States Government. Efforts to normalize marijuana use and promotion by the new industry have generated widespread use-related concerns, particularly among youth. This paper proposes, analyzes, and recommends a narrowly focused effort by the Departments of Justice and Health and Human Services to begin to address the harms created by state-level commercial marijuana policies.

Advisor: Professor Paul J. Weinstein

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All glory to my Savior Jesus Christ, my undying gratitude and love to my precious wife, Eliza, without whom nothing for me is possible, and to the angels God sent us, our two daughters Shiloh and Eden. My heartfelt thanks to Kevin Sabet, for taking a chance in 2017 and the brotherhood we now share. And to my mother, Carol Niforatos, for instilling in me from a young age the desire to serve the poor and care for those who need it most.

“Believe in the light while you have the light, so that you may become children of light.”

John 12:36

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MEMORANDUM

Date: 5/3/22

From: Luke Niforatos

To: President Joe Biden

Subject: Proposal to address state legalization of marijuana through a combination of federal enforcement and education

Action Forcing Event

Connecticut recently became the 18th state to defy federal law and legalize commercial sales and use of recreational marijuana.¹ In addition, Virginia, next door neighbor to Washington, D.C., is on the verge of becoming the 19th state to do this pending passage of a re-enactment bill this year.²

Statement of the Problem

The legalization of marijuana for recreational and commercial purposes in Connecticut and other states presents a rare constitutional crisis in the history of the United States. States taking this action are in violation of federal law, which bans the sale and use of marijuana, and the spillover effects have resulted in infringement on the autonomy of other states. Additionally, early reports on the outcomes of such policies indicate serious public health and safety problems, and a financial drain on the federal government.

¹ "Update on the Legalization of Marijuana in Connecticut," The National Law Review, July 23, 2021, <https://www.natlawreview.com/article/update-legalization-marijuana-connecticut>.

² Kelly Avellino, "Unfinished Marijuana Legislation Has Hazy Future with Virginia's Political Shift in Power," <https://www.nbc29.com>, accessed January 26, 2022, <https://www.nbc29.com/2021/12/23/unfinished-marijuana-legislation-has-hazy-future-with-virginias-political-shift-power/>.

The Controlled Substances Act (CSA) of 1971 establishes a federal ban on the use, possession, and sale of marijuana.³ The implications of this law are wide-ranging, as the law federalizes issues of drug policy and does not permit state-level deviation from its provisions. In addition, according to the U.S. Constitution, in issues where federal and state law differ, federal law supersedes state law with what is commonly known as the “Supremacy Clause.”⁴ The application of this clause, and the supremacy of federal drug control over state laws, has been affirmed for marijuana specifically by the Supreme Court in its decision in *Gonzalez v Raich* (2005).⁵

Allowing states to individually legalize marijuana has resulted in infringement on the autonomy of other states. Colorado, the first state to legalize marijuana, is the source of illicit market sales in over 32 different states.⁶ The majority of states have not chosen to legalize the drug yet are expending additional resources to protect their borders from the impact of nearby states who have. For example, Tennessee, Nebraska, and Oklahoma (all states without legal recreational marijuana) have reported struggles to contend with interstate marijuana seizures, and the latter two states even filed a federal lawsuit against Colorado for the issue.⁷

³ “The Controlled Substances Act,” DEA, accessed February 2, 2022, <https://www.dea.gov/drug-information/csa>.

⁴ Cornell University, “Supremacy Clause,” Legal Information Institute (Legal Information Institute), accessed February 2, 2022, https://www.law.cornell.edu/wex/supremacy_clause.

⁵ Sara Rosenbaum, “Law and the Public’s Health,” *Public Health Reports* 120, no. 6 (2005): pp. 680-682, <https://doi.org/10.1177/003335490512000617>.

⁶ Trevor Hughes, “When Smuggling Colo. Pot, Not Even the Sky’s the Limit,” *USA Today* (Gannett Satellite Information Network, May 17, 2016), <https://www.usatoday.com/story/news/2016/05/13/when-smuggling-colo-pot-not-even-skys-limit/83623226/>.

⁷ Mike Adams, “Indiana Has Its Work Cut out for It Trying to Stop Interstate Marijuana Trafficking,” *Forbes* (Forbes Magazine, June 21, 2019), <https://www.forbes.com/sites/mikeadams/2019/06/21/indiana-has-its-work-cut-out-for-it-trying-to-stop-interstate-marijuana-trafficking/?sh=39ebd9327475>.



Figure 1: States where authorities have intercepted marijuana sourced from Colorado. Taken from USA Today.

A concurrent problem involved in the spillover effect is the rise in cartel activity and illegal marijuana growing. California recently deployed the National Guard to contend with the problem, and Oregon may soon follow suit.^{8,9} Foreign cartels are taking advantage of legal states to cover their illegal marijuana growing operations and are bringing a host of public safety consequences with them.¹⁰ This may seem anachronistic given legalization advocates’ promise of reducing illegal operators through regulation, but it is consistent with illegal operators’ continued involvement with other legal industries, such as mining.¹¹

The public health and safety impacts of legalizing marijuana for Americans are documented by federal and state data, as well as national medical research institutions. According to the National

⁸ Thomas Fuller, “‘Getting Worse, Not Better’: Illegal Pot Market Booming in California despite Legalization,” *The New York Times* (The New York Times, April 27, 2019), <https://www.nytimes.com/2019/04/27/us/marijuana-california-legalization.html>.

⁹ The Associated Press, “Oregon Lawmakers Take Aim at Explosion of Illegal Pot Farms,” *oregonlive*, February 1, 2022, <https://www.oregonlive.com/marijuana/2022/02/oregon-lawmakers-take-aim-at-explosion-of-illegal-pot-farms.html>.

¹⁰ Beth Warren, “Marijuana Wars: Violent Mexican Drug Cartels Turn Northern California into ‘The Wild West,’” *USA Today* (Gannett Satellite Information Network, December 19, 2021), <https://www.usatoday.com/in-depth/news/nation/2021/12/19/mexican-drug-cartels-move-in-on-californias-shadow-marijuana-industry/8960873002/>.

¹¹ Mark Stevenson, “Mexican Drug Cartels Are Now Involved in Lucrative Illegal Mining Operations,” *Business Insider* (Business Insider, November 29, 2013), <https://www.businessinsider.com/mexican-drug-cartels-mining-2013-11>.

Survey on Drug Use and Health (NSDUH), states with legal marijuana have seen increased rates of youth and young adults using marijuana, especially when compared to non-legal states.¹²

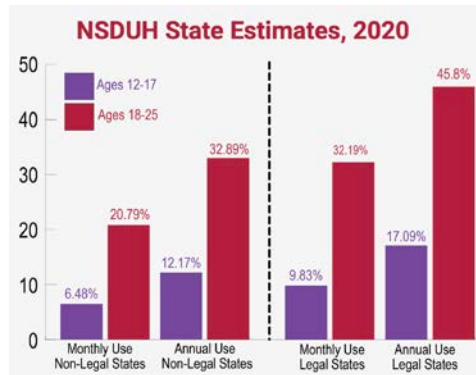


Figure 2: NSDUH State Estimates: Graphic representation of data on youth and young adult use in legal and non-legal states.

The American Medical Association (AMA, which opposes the legalization of marijuana) has documented the increased addictive potential of the drug and its specific harms since states have legalized, particularly for youth and pregnant mothers.¹³ The National Institute on Drug Abuse (NIDA) has released data which show, as of 2020, an increase since legalization from one in ten, to one in three marijuana users in the past year developing a cannabis use disorder (diagnosis code for addiction).¹⁴ Far worse, recent studies show a 25% increase in youth marijuana addiction in states with legal marijuana laws.¹⁵

With the advent of state-level legalization and a nascent commercial industry, the drug has changed dramatically over the course of a decade. Marijuana’s potency, once averaging between

¹² Substance Abuse and Mental Health Services Administration, 2019 State Drug Estimates. (U.S. Department of Health and Human Services, September 11, 2020), <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>.

¹³ David Doolittle, “Ama Reiterates Cannabis Remains a ‘Serious Public Health Concern,’” Texmed, November 19, 2020, <https://www.texmed.org/TexasMedicineDetail.aspx?Pageid=46106&id=55221>.

¹⁴ National Institute on Drug Abuse, “Is Marijuana Addictive?,” National Institutes of Health (U.S. Department of Health and Human Services, April 13, 2021), <https://nida.nih.gov/publications/research-reports/marijuana/marijuana-addictive>.

¹⁵ Magdalena Cerdá et al., “Association between Recreational Marijuana Legalization in the United States and Changes in Marijuana Use and Cannabis Use Disorder from 2008 to 2016,” JAMA Psychiatry 77, no. 2 (January 2020): p. 165, <https://doi.org/10.1001/jamapsychiatry.2019.3254>.

one and three percent in a joint, now reaches as high as 99% in the form of candies, shatters, and other forms of concentrate.¹⁶ While these products are new and research is lacking, early, large-scale studies indicate concerning impacts on mental health. Research published in the *Lancet Journal of Psychiatry* shows a five-fold increase in the likelihood of schizophrenia or psychosis for regular users of today's new, high potency marijuana.¹⁷ This is especially concerning given the way in which the marijuana industry, much like tobacco before it, has targeted youth with these products, such as child-friendly vaping flavors and cartoon characters.¹⁸



Figure 3: Cartoon provided by The Baltimore Sun in article titled, "Pot marketed to kids, too," Dec. 20, 2018.

Other health consequences have abounded. Illinois, for example, has seen an increase of 243% in calls to poison control centers for marijuana since legalization in 2019.¹⁹ It is established fact that

¹⁶ Patrick Kennedy and Kevin Sabet, "This Is No Time to Go to Pot," *The Wall Street Journal* (Dow Jones & Company, June 14, 2018), <https://www.wsj.com/articles/this-is-no-time-to-go-to-pot-1529018027>.

¹⁷ Marta Di Forti et al., "The Contribution of Cannabis Use to Variation in the Incidence of Psychotic Disorder across Europe (EU-Gei): A Multicentre Case-Control Study," *The Lancet Psychiatry* 6, no. 5 (2019): pp. 427-436, [https://doi.org/10.1016/s2215-0366\(19\)30048-3](https://doi.org/10.1016/s2215-0366(19)30048-3).

¹⁸ Susan K. Livio | NJ Advance Media for NJ.com, "Marijuana Industry Using Tobacco's Old Tactics of Preying on Kids, Study Says," nj, June 27, 2020, <https://www.nj.com/marijuana/2020/06/marijuana-industry-using-tobaccos-old-tactics-of-preying-on-kids-study-says.html>.

¹⁹ Jakob Emerson, "Child Cannabis-Exposure Calls to Illinois Poison Center Have Increased 243% since 2019," *WRSP* (WRSP, January 22, 2022), <https://foxillinois.com/news/local/pediatric-cannabis-exposure-calls-to-il-poison-control-have-increased-243-since-2019>.

use of marijuana significantly impairs drivers and has led to traffic crashes and road safety complications.²⁰ A 2020 study published in the Journal of the American Medical Association (JAMA) estimates, based on the state-level experience, an additional 7,000 marijuana-impaired driving fatalities each year nationally if legalization were to occur federally.²¹

The consequences of a patchwork of state laws on marijuana and the corresponding public health and safety outcomes have taken a toll on federal government spending and systems in myriad ways. In the 8 years since states began legalizing recreational marijuana, the total drug enforcement and interdiction budget has increased from \$12.7 billion to \$16.4 billion.²² While this increase is not solely due to state marijuana legalization, it has undeniably been a factor. According to the Drug Enforcement Administration, nearly four million marijuana plants were seized and over 4,500 related arrests made by the administration in 2019 alone.²³ The cost to Medicaid and Medicare for treating marijuana-related illnesses and drug addiction treatment is not currently available, however, the Substance Abuse and Mental Health Services Administration (SAMSHA) reports marijuana has been the top illicit substance of addiction in the country for the past four years.²⁴ If the trend of state legalization, or even federal legalization, continues, these problems will metastasize.

²⁰ NIDA. 2021, April 13. Does marijuana use affect driving?. Retrieved from <https://www.drugabuse.gov/publications/research-reports/marijuana/does-marijuana-use-affect-driving> on 2021, October 6

²¹ Russell S. Kamer, Stephen Warshafsky, and Gordon C. Kamer, “Change in Traffic Fatality Rates in the First 4 States to Legalize Recreational Marijuana,” JAMA Internal Medicine 180, no. 8 (January 2020): p. 1119, <https://doi.org/10.1001/jamainternmed.2020.1769>.

²² Office of National Drug Control Policy. (2021, May 1). National Drug Control Budget: FY2022 Funding Highlights. Executive Office of the President. Retrieved February 9, 2022, from https://www.whitehouse.gov/wp-content/uploads/2021/05/National-Drug-Control-Budget-FY-2022-Funding-Highlights.pdf?fbclid=IwAR1GICvuP2iyxqzsRW0bjwJISl3-Jnglevy1J5NNpDH_WwyobvVdqujqULE.

²³ Drug Enforcement Administration. 2019 National Drug Threat Assessment. https://www.dea.gov/sites/default/files/2020-01/2019-NDTA-final-01-14-2020_Low_Web-DIR-007-20_2019.pdf

²⁴ Substance Abuse and Mental Health Services Administration, 2020 National Survey on Drug Use and Health. (October, 2021),

History/Background

The Controlled Substances Act (CSA) of 1970, signed by President Richard Nixon, established federal authority over drug control and entails a ban on marijuana sale, production, and associated actions along with all other illicit substances contained in its scheduling system.²⁵ For 26 years, this policy was uniformly implemented by states across the country. In the years since the CSA, while use of marijuana fluctuated, the legislation has been successful in reducing prevalence: regular use of the drug has remained at a levels far below that of legal drugs such as alcohol and or tobacco.²⁶ This has been the case globally with all illegal drugs, which combined are a fraction of society's use of legal drugs.

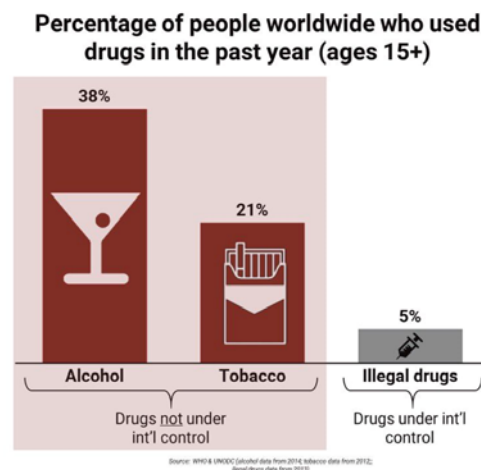


Figure 4: Graphic representation taken from Kevin Sabet, PhD, based on data from the World Health organizations, United Nations Office on Drugs and Crime

Opponents of laws against drugs, and particularly laws against marijuana, began organizing in earnest to legalize in the early 1990s. Their efforts became viable as more than \$200 million was

<https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFRPDFWHTMLFiles2020/2020NSDUHFFR1PDFW102121.pdf>

²⁵ University of Southern California (USC), "Overview of Controlled Substances and Precursor Chemicals," USC Environmental Health Safety, accessed February 17, 2022, <https://ehs.usc.edu/research/cspc/chemicals/>.

²⁶ Bin Yu et al., "Marijuana Legalization and Historical Trends in Marijuana Use among US Residents Aged 12–25: Results from the 1979–2016 National Survey on Drug Use and Health," *BMC Public Health* 20, no. 1 (April 2020), <https://doi.org/10.1186/s12889-020-8253-4>.

given to pro-legalization organizations by billionaires such as John Sperling and George Soros.²⁷ The existence of state marijuana legalization can largely be attributed to the work of two organizations: the Drug Policy Alliance and the Marijuana Policy Project, both of whom were recipients of this money. These organizations, along with other advocates, created a framework to persuade the public that marijuana should be legal by marketing it as “medicine.”²⁸ As Denis Peron, the primary architect of this campaign said himself, “I have created an illusion for marijuana... [by calling it “medical marijuana”] I have changed its name.”²⁹

Through the first half of the 1990s, arguments deployed by proponents of marijuana legalization were consistent with the “medical marijuana” framework and focused specifically on claimed medical benefits of the drug as well as the desperation of patients with cancer, or other forms of terminal illness. These efforts found their first success when in 1996, California became the first state to legalize “medical” (this was not FDA-approved, and patients do not receive prescriptions) marijuana by public referendum. This law allowed the legal sale and use of marijuana for specified medical purposes, which were broad and allowed most people to obtain marijuana.^{30,31} This represented the first state-sanctioned violation of federal law as it related to the Controlled Substances Act.

In response to the passing of California’s “medical” marijuana law, the White House conducted a joint press conference featuring the nation’s “drug czar,” or Director of the Office of National

²⁷ Chloe Sorvino, “An inside Look at the Biggest Drug Reformer in the Country: George Soros,” *Forbes* (Forbes Magazine, October 2, 2014), <https://www.forbes.com/sites/chloesorvino/2014/10/02/an-inside-look-at-the-biggest-drug-reformer-in-the-country-george-soros/?sh=7f2960181e29>.

²⁸ Behind the Smokescreen, Video obtained by Drug Free America Foundation, 2015, <https://www.youtube.com/watch?v=y13ltMtxAuY>.

²⁹ *Ibid.*

³⁰ Sacramento County Public Law Library, “Medicinal Marijuana Laws,” Sacramento County Public Law Library, 2021, <https://saclaw.org/articles/marijuana-laws-in-california-edl/>.

³¹ George J. Annas, *Reefer Madness: The Federal Response to California's Medical-Marijuana Law*, 337 *New England Journal of Medicine* 435 (1997). Available at: https://scholarship.law.bu.edu/faculty_scholarship/1271

Drug Control Policy (ONDCP), as well as the Attorney General at the time, Janet Reno, and the Secretary of Health and Human Services (HHS). At the press conference, Reno stated, “Federal law still applies... U.S. attorneys in both states will continue to review cases for prosecution...”³²

Not long after the press conference, the Drug Enforcement Administration conducted raids on certain medical marijuana dispensaries in California, but a consistent strategy was not enacted, and the effort eventually stopped.³³ While the press conference sent a strong message, no organized federal effort ensued to stop the state’s implementation and it continues today.

Between 1996 and 2012, 21 more states passed various forms of medical marijuana laws which ranged from highly restrictive, such as merely lowering penalties for use, to highly permissive, such as industry-growing measures.³⁴ Federal enforcement during this time was lacking an organized strategy and ultimately deferred to the states. However, in 2010, as California was preparing to vote at the ballot on what would be an unsuccessful attempt to legalize recreational marijuana, President Barack Obama’s Attorney General, Eric Holder, warned the federal government would continue to enforce the law even if the measure passed.³⁵ No enforcement action was taken, however, on any of the existing states with medical marijuana laws.

In the early 2010s, the direction and rhetoric of the marijuana legalization movement began to shift. Instead of advocating for legalization of medical marijuana, proponents began spending millions to put recreational marijuana legalization measures up for public referendums in states like California, Oregon, and Colorado. The rhetoric, originally focused on providing medicine for

³² Ibid.

³³ Robert Mikos, *The Evolving Federal Response to State Marijuana*, 26 *Widener Law Review*. 1 (2020) Available at: <https://scholarship.law.vanderbilt.edu/faculty-publications/1153>

³⁴ NORML, “Active State Medical Marijuana Programs,” NORML, 2008, https://web.archive.org/web/20080503160619/http://norml.com/index.cfm?Group_ID=3391.

³⁵ Steve Gorman, “Attorney General Holder Opposes California Marijuana Bill,” Reuters (Thomson Reuters, October 16, 2010), <https://www.reuters.com/article/us-usa-marijuana-california/attorney-general-holder-opposes-california-marijuana-bill-idUSTRE69F03V20101016>.

patients who desperately needed it, now focused on two primary arguments. First, proponents claimed a fully legalized and regulated marijuana regime would eliminate the illicit market for the drug, such as cartel activity and drug dealers.³⁶ Second, they argued the policy would initiate a windfall of tax revenue which would be used for education.³⁷ In practice, both promises have so far proven elusive. In California, for example, the illicit market has caused the state-legal marijuana industry to “collapse,”³⁸ while the state is now proposing to eliminate cultivation taxes to help them compete.³⁹ Other states have encountered similar predicaments.⁴⁰ Regarding tax revenue, marijuana taxes represent a fraction of every state’s annual revenues, such as Oregon and Alaska, where such revenue makes up only .3%.

In 2012, after some unsuccessful attempts and millions of dollars spent advertising messages on regulation and tax revenue,⁴¹ Colorado and Washington State became the first states to fully legalize marijuana for recreational purposes (both states had legalized medical marijuana already).⁴² By this time, the once nascent, still federally illegal marijuana industry had grown considerably and was poised for broad expansion. In response to these developments, the Obama Administration issued guidance in 2013, written by Deputy Attorney General James Cole in what

³⁶ Matt Ferner, “Why Marijuana Should Be Legalized,” HuffPost (HuffPost, August 29, 2012), https://www.huffpost.com/entry/why-marijuana-should-be-legalized_n_1833751.

³⁷ Steves, Rick, “It’s Time for a New Approach to Marijuana,” Rick Steves’ Europe, 2012, <https://www.ricksteves.com/about-rick/new-approach-to-marijuana>.

³⁸ Associated Press, “California Pot Companies Warn of Impending Industry ...,” Associated Press, December 17, 2021, <https://www.usnews.com/news/business/articles/2021-12-17/california-pot-companies-warn-of-impending-industry-collapse>.

³⁹ McGuire, Mike, SB 1074. (2022), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1074.

⁴⁰ Natalie Fertig, “Talk about Clusterf---: Why Legal Weed Didn’t Kill Oregon’s Black Market,” POLITICO (POLITICO, January 21, 2022), <https://www.politico.com/news/magazine/2022/01/14/oregon-marijuana-legalization-black-market-enforcement-527012>.

⁴¹ KUNC, “Amendment 64: Who’s Bankrolling What?,” KUNC, September 21, 2012, <https://www.kunc.org/politics/2012-09-18/amendment-64-whos-bankrolling-what>.

⁴² Keith Coffman and Nicole Neroulias, “Colorado, Washington First States to Legalize Recreational Pot,” Reuters (Thomson Reuters, November 7, 2012), <https://www.reuters.com/article/us-usa-marijuana-legalization/colorado-washington-first-states-to-legalize-recreational-pot-idUSBRE8A602D20121107>.

is now known as the “Cole Memo.” The letter instructed U.S. Attorneys and federal prosecutors to enforce the CSA as it related to eight policy priorities:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.⁴³

The implication of Cole Memo was to ignore states choosing to legalize marijuana, even though they were in violation of federal law (and in most cases the eight areas specified above), and U.S. Attorneys acted accordingly. The marijuana industry hailed it as tacit federal recognition of their legitimacy. The National Cannabis Industry Association (NCIA) described the memo as, “...the first time that the federal government [indicated it] would only intervene in states that failed to prevent criminal involvement in the market, sales to youths, and illegal diversion to other states.”⁴⁴ At the same time as the announcement of the memo, the Obama Administration sought to assure national banks they would not risk enforcement so long as the marijuana companies they did business with did not violate the eight priorities.⁴⁵

⁴³ James M. Cole, “Cole Memo,” DOJ § (2013). <https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20%282%29.pdf>

⁴⁴ National Cannabis Industry Association, “Cole Memo,” The National Cannabis Industry Association, 2014, <https://thecannabisindustry.org/category/cole-memo/>.

⁴⁵ Serge F. Kovalski, “U.S. Issues Marijuana Guidelines for Banks,” The New York Times (The New York Times, February 14, 2014), <https://www.nytimes.com/2014/02/15/us/us-issues-marijuana-guidelines-for-banks.html>.

By December of 2014, a year after the Cole Memo, Congress passed an amendment within a much larger appropriations bill which de-funded the ability for the Department of Justice to enforce federal laws specifically related to medical marijuana.⁴⁶ The effect was to legalize medical marijuana, though it remains illegal under federal law (which now cannot be enforced). In 2016, further complicating the federal approach to marijuana, then-Attorney General Jeff Sessions under President Donald Trump rescinded the Cole Memo and reinstated a philosophy of federal enforcement of the CSA.⁴⁷ This action, while sending a chilling effect throughout the marijuana industry,⁴⁸ did not result in any reported federal enforcement of marijuana laws.

From 2012 to 2020, while Ohio, Arizona, and North Dakota, rejected recreational legalization at the ballot, 16 more states passed such laws (and Arizona ultimately passed it after a second referendum in 2020).⁴⁹ In 2020, in the wake of the George Floyd protests and greater public advocacy for social justice and equity, a marked shift occurred in the rhetoric of legalization advocates. Instead of an emphasis on regulation and tax revenue, proponents shifted their arguments to cast legalization as a social justice issue. First, they state legalization will address disproportionate arrest rates for Black Americans and reduce the prison population.⁵⁰ Second, they claim marijuana laws can be written to bring about social equity, such as equal Black

⁴⁶ Evan Halper, "Congress Quietly Ends Federal Government's Ban on Medical Marijuana," Los Angeles Times (Los Angeles Times, December 16, 2014), <https://www.latimes.com/nation/la-na-medical-pot-20141216-story.html>.

⁴⁷ Jeff Sessions, "Justice Department Issues Memo on Marijuana Enforcement," The United States Department of Justice, January 4, 2018, <https://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement>.

⁴⁸ Laura Jarrett, "Sessions Nixes Obama-Era Rules Leaving States Alone That Legalize Pot | CNN Politics," CNN (Cable News Network, January 4, 2018), <https://www.cnn.com/2018/01/04/politics/jeff-sessions-cole-memo/index.html>.

⁴⁹ Michael Hartman, "Cannabis Overview," Cannabis overview (NCSL, 2022), <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

⁵⁰ Cody Jorgensen, "How Marijuana Legalization Would Benefit the Criminal Justice System," The Blue Review (Boise State University, May 19, 2020), <https://www.boisestate.edu/bluereview/how-marijuana-legalization-would-benefit-the-criminal-justice-system/>.

ownership of the industry and other forms of minority participation. They also promise to invest the tax revenue in minority communities.⁵¹ Both of these sets of claims are dubious at best. While overall marijuana-related arrests have gone down after statewide legalization, disparities in arrest rates among Black Americans persist.⁵² Regarding social equity, less than 5% of the marijuana industry nationally is Black-owned.⁵³

In 2018, Altria, the new name for Phillip Morris and Marlboro, the nation's largest tobacco company, invested \$1.8 billion in the marijuana industry.⁵⁴ This set off a flurry of investment activity from other Big Tobacco companies, as well as America's largest alcohol conglomerate, Constellation Brands, which has invested more than \$4 billion.⁵⁵ Even Purdue Pharmaceuticals' former CEO, John Stewart, became the CEO of a marijuana company.⁵⁶ The flurry of investment from other vice industries with poor track records in public health has led to a marked shift in marijuana legalization advocacy. Altria and Constellation have formed the Coalition for Cannabis Policy, Education, and Regulation (CPEAR) to formally lobby for legalization at the federal and state levels.⁵⁷ What once began as a movement for medical patients, has graduated to a profit-

⁵¹ Sabina Morris, John Hudak, and Christine Stenglein, "State Cannabis Reform Is Putting Social Justice Front and Center," Brookings (Brookings, April 16, 2021), <https://www.brookings.edu/blog/fixgov/2021/04/16/state-cannabis-reform-is-putting-social-justice-front-and-center/>.

⁵² Paul Schwartzman and John D. Harden, "D.C. Legalized Marijuana, but One Thing Didn't Change: Almost Everyone Arrested on Pot Charges Is Black," The Washington Post (WP Company, September 15, 2020), https://www.washingtonpost.com/local/legal-issues/dc-marijuana-arrest-legal/2020/09/15/65c20348-d01b-11ea-9038-af089b63ac21_story.html.

⁵³ William Sumner, "Why Are Only 4 Percent of Cannabis Businesses Owned by African Americans?," Green Entrepreneur (Green Entrepreneur, June 4, 2020), <https://www.greenentrepreneur.com/article/315528>.

⁵⁴ Laurenschirsch, "Altria to Invest \$1.8 Billion in Cannabis Company Cronos Group, Exits Some e-Cig Brands," CNBC (CNBC, December 7, 2018), <https://www.cnbc.com/2018/12/07/altria-to-invest-1point8-billion-in-cannabis-company-cronos-group.html>.

⁵⁵ "Constellation Expects \$54.8 Million in Quarterly Losses from Investment in Weed Producer Canopy," CNBC (CNBC, August 26, 2019), <https://www.cnbc.com/2019/08/26/constellation-expects-54point8-million-hit-for-stake-in-weed-producer-canopy.html>.

⁵⁶ Jessica Murphy, "Ex-Big Pharma Executive behind OxyContin Sells Medical Marijuana," BBC News (BBC, November 25, 2016), <https://www.bbc.com/news/world-us-canada-38083737>.

⁵⁷ Home Website, Coalition for Cannabis Policy, Education, and Regulation, April 12, 2021, <https://www.cpear.org/>.

oriented, corporate endeavor to protect a new multi-billion-dollar project. With this infusion of investment, the marijuana industry has grown to more than \$40 billion in estimated market size.⁵⁸ Increased sales by definition means increased use of the drug. Unsurprisingly, use and especially “problematic” use – among adults and youth – has risen substantially in states allowing the drug to be sold.⁵⁹

Today, 18 states have legalized recreational marijuana and roughly 33 states have allowed some form of “medical” marijuana. Federally, while the Cole Memo has been rescinded, the Department of Justice has not enforced laws on recreational marijuana operators. President Joe Biden has stated he is opposed to the legalization of marijuana at the federal level.⁶⁰ In Congress, marijuana-related activity has increased each year as the industry invests more money on Washington’s infamous K-street.⁶¹ Currently, an amendment to de-fund DOJ from enforcing laws on recreational marijuana – identical to the amendment in place addressing medical marijuana – led by Representative Earl Blumenauer from Oregon, has been introduced and rejected repeatedly over the past decade. Another bill, called the “SAFE” Banking Act, has been introduced and passed in the U.S. House, which would allow the marijuana industry to access the financial system while remaining federally illegal – an unprecedented step which has so far been rejected by the U.S. Senate. Other legislation, such as the Medical Marijuana Research Act led by

⁵⁸ Will Yakowicz, “U.S. Cannabis Sales Hit Record \$17.5 Billion as Americans Consume More Marijuana than Ever Before,” *Forbes* (Forbes Magazine, December 10, 2021), <https://www.forbes.com/sites/willyakowicz/2021/03/03/us-cannabis-sales-hit-record-175-billion-as-americans-consume-more-marijuana-than-ever-before/?sh=7529da572bcf>.

⁵⁹ Sasha Walk, “In States Where Recreational Marijuana Is Legal, Adults & Teens Report Increased Problematic Use,” *NYU Langone News*, 2019, <https://nyulangone.org/news/states-where-recreational-marijuana-legal-adults-teens-report-increased-problematic-use>.

⁶⁰ Maeve Sheehey, “Psaki: Biden Unmoved on Marijuana Legalization despite Schumer Legislation,” *POLITICO* (POLITICO, July 14, 2021), <https://www.politico.com/news/2021/07/14/biden-marijuana-legalization-499642>.

⁶¹ Julie Bykowicz, “Cannabis Goes Corporate: Lobbyists, Unions Seek to Shape Marijuana Industry,” *The Wall Street Journal* (Dow Jones & Company, May 8, 2021), <https://www.wsj.com/articles/cannabis-goes-corporate-lobbyists-unions-seek-to-shape-marijuana-industry-11620466202>.

Senators “Chuck” Grassley and Diane Feinstein, which would expand research on the drug, looks more likely to be headed for passage this Congress.

Policy Proposal

The policy goal of this memorandum is to stop the market growth of the illegal marijuana industry, reduce the inflow of private investment, and reduce marijuana use and addiction rates among youth nationally. Achievement of this goal will not fully reverse state-level violations of federal law on marijuana, but it will result in a sea change at the state level which will stop growth and reduce the industry’s footprint by more than 25%. A reduction in industry activity and promotion can feasibly be expected to reduce the impact these policies have had on youth use of marijuana. This will serve as a first step to correcting the current constitutional crisis between federal and state laws and reduce the problem significantly. To achieve this goal, President Joe Biden should do three things:

- 1) Ask Attorney General Merrick Garland to direct U.S. Attorneys to enforce federal marijuana laws on the largest marijuana companies engaged in targeting and appealing to youth in any way and/or selling marijuana products with potency above 15% THC.
- 2) Ask Senate Democratic leadership to include \$50 million in funding in the Build Back Better legislation currently under consideration for the Department of Health and Human Services to conduct a national education campaign on the current science of marijuana’s harms and addiction potential.

Policy Authorization Tools

The policy authorization tools utilized in this proposal are executive authority, legal precedent, and new laws. Legal precedent provides the platform for this proposal: the CSA is the law of the land. The President of the United States has both constitutional and political authority to order the Attorney General to issue a directive to federal prosecutors to focus on Part 1 of this policy proposal.⁶² No executive order is required, as Presidential administrations and Attorneys General regularly coordinate priorities for enforcement.⁶³ Attorneys General, as was seen with the Cole Memo, are authorized to direct federal prosecutors to prioritize certain elements of the law. Part 2 of the proposal requires the passage of legislation appropriating funding for a marijuana-targeted public education program. This will be done by asking Senate Democratic leadership to add the program to the Build Back Better legislation currently being debated. The bill is still in a phase where it can be changed, and given the focus on “social infrastructure,” it is a promising vehicle for implementation.⁶⁴

Policy Implementation Tools

Part 1 of the policy proposal should begin with President Biden and Attorney General Garland calling a press conference to notify the public of the imminent harm of high potency marijuana and the efforts by marijuana companies to develop products and THC delivery mechanisms targeted at youth, and warn marijuana businesses of impending enforcement if they violate a set of legal priorities. These priorities will be spelled out by the Attorney General in a directive to federal prosecutors as the following draft memorandum:

⁶² The White House, “The Executive Branch,” The White House (The United States Government, January 17, 2021), <https://www.whitehouse.gov/about-the-white-house/our-government/the-executive-branch/>.

⁶³ Thomas J Kelly et al., “Predicting the Enforcement Priorities of the Biden DOJ: Faegre Drinker Biddle & Reath LLP,” Publications | Insights | Faegre Drinker Biddle & Reath LLP, February 24, 2021, <https://www.faegredrinker.com/en/insights/publications/2021/2/predicting-the-enforcement-priorities-of-the-biden-doj>.

⁶⁴ Alexander Bolton, “Democrats Frustrated with Latest Manchin Pitch on Build Back Better,” TheHill (The Hill, March 4, 2022), <https://thehill.com/homenews/senate/596822-democrats-frustrated-with-latest-manchin-pitch-on-build-back-better>.

There is now exhaustive and definitive scientific and psychiatric evidence that establishes the harm that is caused by high potency THC and especially on youth. Given the evolution of that science and proliferation of these products, as well as the development of highly potent THC products and targeting of youth, I am directing U.S. Attorneys as appropriate in their jurisdiction to prioritize enforcement for:

- 1) Entities or individuals who are causing the most public harm and are most culpable for the decisions in advancing:*
- 2) Targeting, enticing, or causing youth to use marijuana; defined broadly as any product formulation other than pill or tinctures, advertising which reasonably can be appealing to youth, and other FDA-recommended parameters.*
- 3) Production, sale, or distribution of high potency marijuana products; defined as any product over 15% potency.*



Figure 5: Example of state-legal product sold by America’s largest marijuana company, CuraLeaf, which would violate this proposed policy.

U.S. Attorneys will then be asked to build cases against top marijuana companies which are found in violation of this directive. Enforcement will also entail asset forfeiture⁶⁵ and referral of cases to the Securities and Exchange Commission to de-list those companies on public stock

⁶⁵ Department of Justice, “9-111.000 - Forfeiture/Seizure,” The United States Department of Justice, January 29, 2020, <https://www.justice.gov/jm/jm-9-111000-forfeitureseizure>.

exchanges⁶⁶, both of which there is a wide array of precedent and authority for doing.⁶⁷ Under the intent of this proposal, arrests should be minimal and focused on those causing the most harm. The cost of Part 1 will not be outside of the existing budget of the Department of Justice, since their budget is allocated toward enforcement and this action will be shift in priorities, not a new function.⁶⁸

Part 2 requires legislation to be passed which will allocate \$50 million for an education campaign, directed by HHS, to educate the public on the scientifically understood harms and addiction potential of marijuana. The advertising should entail a combination of digital and local television advertisements, video and static pictures, with facts on marijuana's harms for youth and the general public, as well as data on the outcomes of marijuana commercialization (such as increases in traffic fatalities). This campaign should last one year, ideally to be renewed with further appropriations based on the success of the campaign. The cost implication, \$50 million, is derived from spending about \$1 million per state, which is enough to ensure digital advertising reaches all Americans many times over as well as placing ads in some local and state-level television. There is precedent for this approach. As recent as 2019, the President, Surgeon General, and Secretary of HHS issued a national advisory on the impact of marijuana on youth and pregnant mothers and allocated funds from the President's salary for an advertising campaign which had a budget of \$100,000.⁶⁹

⁶⁶ Bob Pisani, "SEC Finalizes Rule That Allows It to Delist Foreign Stocks for Failure to Meet Audit Requirements," CNBC (CNBC, December 2, 2021), <https://www.cnbc.com/2021/12/02/sec-issues-final-regs-that-allow-it-to-delist-foreign-companies-that-dont-comply-with-audit-rules.html>.

⁶⁷ Bob Troyer, former U.S. Attorney for Colorado under Obama, Process for U.S. Attorneys to refer cases to the SEC for de-listing confirmed, Phone Call Interview, March 12, 2022.

⁶⁸ Ibid.

⁶⁹ Office of the Surgeon General, "U.S. Surgeon General's Advisory: Marijuana Use and the Developing Brain," HHS.gov, August 29, 2019, <https://www.hhs.gov/surgeongeneral/reports-and-publications/addiction-and-substance-misuse/advisory-on-marijuana-use-and-developing-brain/index.html>.

From a cost perspective, the only new money being spent is a \$50 million education campaign. All enforcement is already funded by congress and requires reprioritization of departmental efforts.

Policy Analysis

The proposed policy seeks to reduce by 25% the number of large, federally illegal marijuana companies in operation in the United States. This will be achieved by conducting a two-part plan which is detailed in the policy proposal. The approach proposed can be best assessed via analysis of historical actions taken for a similar purpose, cost-benefit analysis, effectiveness, equity, and efficiency. Additionally, expert opinion provides a basis for understanding the approach's potential for success.

Part 1, which asks DOJ to enforce federal marijuana laws in a targeted manner, if executed, effectively achieves its goal of a 25% reduction by targeting the top marijuana companies. As has been shown, most large marijuana companies are in violation of the two principles of part 1, which identify violations as either targeting youth or selling high potency products. Successful cases brought against these entities, then, will bring about the policy goal.

Professor Kleiman states the increased efficiency of a more targeted approach by stating, "the sheer volume of the current illicit drug traffic...makes routine drug law enforcement an exercise in shoveling sand against the tide. But if the United States concentrated its enforcement efforts against (selected) dealers... it would be possible to issue convincing

threats.”⁷⁰ These convincing threats by law enforcement, in his view, could be effective. “If you disrupt a (drug) market for long enough, you can eliminate it with few arrests by focusing on large players.”⁷¹ A narrowly focused roadmap for enforcement may be more cost-effective and easier to implement consistently where previous, broader attempts failed.

Public Health

Pros

Given lower marijuana use rates across all ages in states where some level of marijuana enforcement continues to exist,⁷² it is likely Part 1 would result decreased use and addiction. Cerda, et al., found non-legal states have 25% lower youth marijuana addiction rates than legal states.⁷³ And the overall monthly and yearly use rates, per NSDUH, are dramatically lower in non-legal states than their counterparts.⁷⁴ It is logical, then, to conclude a 25% reduction in the number of marijuana companies, leading to a reduction in advertising and promotion, will steer legal states toward this outcome. It is impossible to forecast the exact percent decrease in addiction and use rates corresponding to a 25% reduction in the industry, but the floor should be seen as comparable rates in legal states-

⁷⁰ Kleiman, Mark. “Surgical Strikes in the Drug Wars: Smarter Policies for Both Sides of the Border.” *Foreign Affairs* 90, no. 5 (2011): 89–101. <http://www.jstor.org/stable/23041779>.

⁷¹ Mark Kleiman, “Mark Kleiman Comments on Drugs, Violence and Putting Cartels out of Business,” National Institute of Justice, April 1, 2012, <https://nij.ojp.gov/media/video/18071>.

⁷² Substance Abuse and Mental Health Services Administration, 2019 State Drug Estimates. (U.S. Department of Health and Human Services, September 11, 2020), <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>.

⁷³ Magdalena Cerdá et al., “Association between Recreational Marijuana Legalization in the United States and Changes in Marijuana Use and Cannabis Use Disorder from 2008 to 2016,” *JAMA Psychiatry* 77, no. 2 (January 2020): p. 165, <https://doi.org/10.1001/jamapsychiatry.2019.3254>.

⁷⁴ Substance Abuse and Mental Health Services Administration, 2019 State Drug Estimates. (U.S. Department of Health and Human Services, September 11, 2020), <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>.

meaning a maximum reduction of 25% in addiction among youth and a return to the mean use rates in legal states. This decrease would result in lower addiction treatment admissions and poison control center calls (which are up more than 100% in legal states)⁷⁵, saving the financial costs associated. Finally, a hard cost can be associated with the statistically significant increase of more than 2% in traffic deaths in states with legal marijuana,⁷⁶ as the Centers for Disease Control and Prevention have determined the total cost of one road death as more than \$1.4 million.⁷⁷ Any reduction in use will save on this increase in costs.

In 2007, SAMSHA conducted a Cost-Benefit Analysis of federal drug prevention strategies. They estimated the societal costs of drug use and addiction as more than \$500 billion annually, with drugs other than alcohol and tobacco accounting for roughly \$150 billion.⁷⁸ With the implementation of federal prevention activities, savings are estimated to amount to more than \$1 billion. This estimate comes from the reduction in medical services, justice system, work-related, and other associated costs.⁷⁹ While this proposal does not directly involve drug prevention programs, it is consistent with the enforcement

⁷⁵ Daniel Lampariello, “Poison Control Calls up 160% since Recreational Marijuana Legalization,” WGME (WGME, August 22, 2019), <https://wgme.com/news/marijuana-in-maine/poison-control-calls-up-160-since-recreational-marijuana-legalization>.

⁷⁶ Russell S. Kamer, Stephen Warshafsky, and Gordon C. Kamer, “Change in Traffic Fatality Rates in the First 4 States to Legalize Recreational Marijuana,” *JAMA Internal Medicine* 180, no. 8 (January 2020): p. 1119, <https://doi.org/10.1001/jamainternmed.2020.1769>.

⁷⁷ Centers for Disease Control and Prevention, “State-Specific Costs of Motor Vehicle Crash Deaths,” CDC, November 5, 2020, <https://www.cdc.gov/transportationsafety/statecosts/index.html>.

⁷⁸ Substance Abuse and Mental Health Services Administration, “Substance Abuse Prevention Dollars and Cents: A Cost-Benefit Analysis.” SAMSHA § (2007), <https://www.samhsa.gov/sites/default/files/cost-benefits-prevention.pdf>.

⁷⁹ *Ibid.*

and prevention activities detailed in SAMSHA’s report and the report provides useful context for federal activities to reduce drug use.

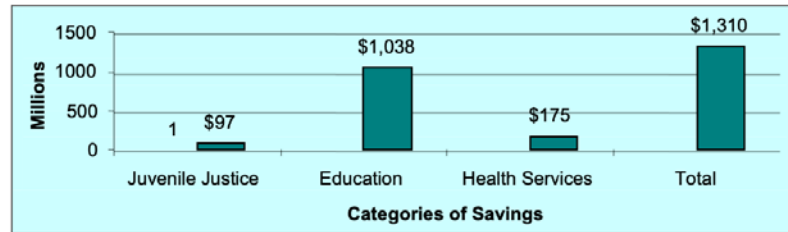


Figure 6: "State Savings Within 2 Years of Implementation of Effective Prevention Programs Using Medium Estimates," SAMSHA, 2007

Cons

The costs of this proposal’s implementation center around federal enforcement of Part 1. While total federal drug enforcement spending is over \$16 billion,⁸⁰ no breakdown is available for how much is spent on marijuana-related activities. This policy proposal asks for a shifting of federal priorities from other activities (such as fraud or organized crime) to elevate state-legal marijuana operators, which in the eyes of federal law are crime syndicates. Therefore, increases in federal crimes in other aspects of federal law are possible, as well as a reduction in resources for the related cases currently being sought. Instead of focusing on marijuana use, some may argue federal prosecutors should prioritize, for example, the sources of the opioid crisis currently killing more than 100,000 Americans per year.⁸¹

⁸⁰ Office of National Drug Control Policy. (2021, May 1). National Drug Control Budget: FY2022 Funding Highlights. Executive Office of the President. Retrieved February 9, 2022, from https://www.whitehouse.gov/wp-content/uploads/2021/05/National-Drug-Control-Budget-FY-2022-Funding-Highlights.pdf?fbclid=IwAR1GlCvuP2iyxqzsRW0bjwJIS13-Jnglevy1J5NNpdH_WwyobvVdqjqULE.

⁸¹ Centers for Disease Control and Prevention, "Drug Overdose Deaths in the U.S. Top 100,000 Annually," CDC, November 17, 2021, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm.

Market Impacts

Cons

A cost not considered by public health estimates and the previous report by SAMSHA is the footprint of the illicit market. By eliminating or reducing state-regulated marijuana companies, demand which they have generated and satisfied will be unmet and could lead to an increase in cartel activity. Currently the national market for state-legal marijuana is in the tens of billions of dollars and while most marijuana sales in these states continue to happen on the illicit market⁸², a reduction in the industry would drive a considerable number of users to criminal elements. This could entail greater violence and harm to consumers who receive a completely unregulated product. Ultimately, such results would require more federal dollars spent on enforcement.

Currently, there are more than 400,000 Americans employed by the state-legal marijuana industry.⁸³ Perhaps the most considerable of all costs associated with this proposal is the elimination of jobs from the nation's economy. This proposal, if successfully implemented, will result in roughly 100,000 of these jobs being eliminated and therefore increase unemployment numbers in these states. Additionally, many of these companies are publicly traded on the stock exchange. American investors will lose considerable

⁸² Kevin Murphy, "Cannabis' Black Market Problem," *Forbes* (Forbes Magazine, April 4, 2019), <https://www.forbes.com/sites/kevinmurphy/2019/04/04/cannabis-black-market-problem/?sh=3171e075134f>.

⁸³ A.J. Herrington, "New Cannabis Jobs Report Reveals Marijuana Industry's Explosive Employment Growth," *Forbes* (Forbes Magazine, February 25, 2022), <https://www.forbes.com/sites/ajherrington/2022/02/23/new-cannabis-jobs-report-reveals-marijuana-industrys-explosive-employment-growth/?sh=50cf377523f2>.

holdings when these companies are de-listed and the impact on index funds, as well as the market generally, is difficult to predict.

Tax Revenues

Cons

In 2018, the federal government collected more than \$2.8 billion in taxes from the state-legal marijuana industry.⁸⁴ States received a combined roughly \$10 billion in tax revenue. With the implementation of this proposal, based on a 25% reduction in the market, both federal and state governments stand to lose substantial revenues. From a state perspective, research of state budgets has shown the maximum portion of a state's budget inlays made up by marijuana taxes is 1.3%, while most legal marijuana states see roughly .5%.⁸⁵ The downstream impact of these losses would be the reduction or elimination of state-level programs tied to marijuana tax revenue, such as education or general fund expenditures.

Pros

Little has been done to estimate the cost of regulating marijuana at the state level for a comparison to the revenues derived from taxes. Only one known report on this subject exists, from the Centennial Institute, a Colorado-based think tank which has taken an anti-marijuana legalization stance. The Institute conducted a study in 2018 finding

⁸⁴ Aaron Smith, "Marijuana Legalization: US Pot Industry Pays Billions in Taxes, Much of It in Cash," CNNMoney (Cable News Network, January 18, 2018), <https://money.cnn.com/2018/01/18/smallbusiness/marijuana-industry-taxes-irs/index.html>.

⁸⁵ Smart Approaches to Marijuana, "Revenues Vs. Reality," SAM, January 1, 2022, <https://learnaboutsam.org/local-control-resource-center/revenues-reality/>.

Colorado spends \$4.50 on social costs and regulation for every \$1 in marijuana tax revenue.⁸⁶ While data are lacking from other states, this follows the trend with comparable vice drugs, such as tobacco. The federal government loses money annually on its tobacco taxes, with societal costs of the drug exceeding \$300 billion and nearly 500,000 related deaths each year.⁸⁷

Equity

Enforcement of marijuana laws has historically had a disproportionate impact on low-income and minority communities.⁸⁸ This proposal to enforce the law on the top marijuana companies will be scrutinized for its impact on these populations. Currently, less than 20% of the industry is minority-owned,⁸⁹ yet state-legal pot shops, such as those in Colorado, are predominantly in communities of color.⁹⁰ Enforcement on top companies targeting these communities may in part reduce this burden.

⁸⁶ Centennial Institute, “Economic and Social Costs of Legalized Marijuana,” Centennial Institute, March 25, 2019, <https://centennial.ccu.edu/policy-briefs/marijuana-costs/>.

⁸⁷ Centers for Disease Control and Prevention, “Economic Trends in Tobacco,” CDC (Centers for Disease Control and Prevention, May 25, 2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm.

⁸⁸ American Civil Liberties Union (ACLU), “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform,” ACLU, April 20, 2020, <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

⁸⁹ William Sumner, “Why Are Only 4 Percent of Cannabis Businesses Owned by African Americans?,” Green Entrepreneur (Green Entrepreneur, June 4, 2020), <https://www.greenentrepreneur.com/article/315528>.

⁹⁰ David Migoya and Ricardo Baca, “Denver’s Pot Businesses Mostly in Low-Income, Minority Neighborhoods,” The Denver Post (The Denver Post, January 23, 2017), <https://www.denverpost.com/2016/01/02/denvers-pot-businesses-mostly-in-low-income-minority-neighborhoods/>.

Part 2

Part 2 of this proposal requires inclusion of \$50 million for a federal marijuana education campaign in the Build Back Better legislation being considered by Congress.

Additionally, the engagement of the President's bully pulpit is requested to raise the level of awareness on the harms of marijuana use. This would be consistent with President Biden's willingness both to continue publicly stating his opposition to legalization, as well as call for more funding to educate the public on the harms of drugs.⁹¹ From a historical perspective, this continues a precedent used for marijuana education under the Obama and Trump Administrations. The primary cost of this aspect of the proposal, outside of its financial cost, is the opportunity cost for other issues which can also receive education funding. Examples of this could be the opioid crisis or human trafficking awareness. The benefits, as can be seen from the 2007 SAMSHA report, can be a reduction in the societal cost of marijuana use.

Conclusion

There are a wide array of criteria to assess any policy implementation related to drug laws. Ultimately, the goal of this proposal, to reduce the federally illegal marijuana industry, is couched in a greater vision of the federal drug control strategy which is to reduce overall drug use. From a legal perspective, the current crisis of federal and state law should also be considered. Action taken by the federal government to increase

⁹¹ White House, "FY23 Federal Drug Control Request." https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_20_drug_control_fy2023.pdf.

consistency in the application of the law may improve the legitimacy of federal law. Conversely, enforcement action taken now could instigate broad legal action by the industry and create an even larger constitutional crisis. Full implementation of this proposal will result in financial loss as it relates to state and federal tax revenues, as well as jobs. It may also increase illicit market activity. As far as benefits, the proposal could create positive public health and societal outcomes, as well as reduce costs taken on by states choosing to regulate marijuana.

Political Analysis

The political theater of the marijuana issue is broad and complex. Amid the debate about legalization are the positions and tendencies of both political parties and the impact of state policy decisions. The Drug Policy Alliance and Marijuana Policy Project have historically led advocacy for legalization, but their work has lost significance due to a significant change over the past several years. There is now a multi-billion-dollar industry in legal states which has engaged in lobbying at the state and federal levels to legalize their operations. The marijuana industry has been joined by several legal institutional players who have invested, as well. Opposition to legalization has primarily been led by most public health, law enforcement, education, family, and conservative groups.

A paradox at the heart of the contention on marijuana legalization is America's federalism debate, which has existed since its founding. Though the U.S. Constitution is

clear about the supremacy of federal law, particularly among conservatives there is a vein of support for “state rights” – based on the 10th amendment – which maintains the states should be able to decide for themselves on this issue irrespective of federal law. This view is maintained by a minority of outspoken Congress members such as Nancy Mace, the Republican Congresswoman from South Carolina,⁹² and Rand Paul, the Republican Senator from Kentucky.⁹³ Some Democrats also take this state rights position, such as Senators Kristen Gillibrand and Cory Booker. Another important political debate is that of social justice reform, particularly in light of George Floyd. Some elected officials see marijuana legalization as a key pillar of efforts to address systemic wrongs in the justice system, such as Congresswoman Alexandria Ocasio Cortez.

On a formal basis, along with President Biden’s stated opposition to marijuana legalization and support for decriminalization of low-level possession of the drug, both the Democratic and Republican Party platforms do not call for the legalization of marijuana.^{94,95} Regardless, polls find a stronger majority of Democrats support legalization of marijuana than do Republicans, at 78% and 55%, respectively according to a poll by Pew Research in 2019.⁹⁶ This has played out at the state level, where

⁹² Anna Beahm <https://www.reckonsouth.com/author/abeahm/>, “Meet the GOP Congresswoman Using ‘States’ Rights’ to Legalize Cannabis ,” Reckon South, November 22, 2021, <https://www.reckonsouth.com/meet-the-gop-congresswoman-using-states-rights-to-legalize-cannabis/>.

⁹³ Conor Friedersdorf, “The Superiority of a States’ Rights Approach to Marijuana,” The Atlantic (Atlantic Media Company, January 29, 2018), <https://www.theatlantic.com/politics/archive/2018/01/the-superior-morality-of-a-states-rights-approach-to-marijuana/549707/>.

⁹⁴ Amanda Terkel, “Democrats Reject Marijuana Legalization in Party Platform,” HuffPost (HuffPost, July 28, 2020), https://www.huffpost.com/entry/marijuana-legalization-democratic-party-platform_n_5f1f9250c5b69fd47310aca7.

⁹⁵ Omar Sacirbey and John Schroyer, “Marijuana Legalization and the 2020 Election,” MJBizDaily, December 18, 2021, <https://mjbizdaily.com/election-platform-pointers/>.

⁹⁶ Andrew Daniller, “Two-Thirds of Americans Support Marijuana Legalization,” Pew Research Center (Pew Research Center, May 30, 2020), <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/>.

traditionally “blue” states have been the first to legalize the drug, such as California, Oregon, Colorado (although once considered purple, the state has not elected a Republican to statewide office since 2014) and Washington State. Of the traditionally “red” states, Arizona and Montana became the first to legalize recreational marijuana in 2020.⁹⁷ More broadly, 67% of Americans polled by Pew in 2019 answered “yes” to the question of whether they support legalizing the “use of marijuana.”⁹⁸ While this survey indicates popular support for reforming federal marijuana laws, it should not be misconstrued as support for legalizing the drug wholesale.

A national poll conducted in 2022 by Emerson College and funded by Smart Approaches to Marijuana (SAM), a nonprofit organization opposed to the legalization of marijuana, found 62% of Americans prefer options other than recreational legalization.⁹⁹ This finding was consistent with two additional polls at the state level, in Maryland and New Hampshire.¹⁰⁰ In these polls, respondents are given four options: maintain illegality, decriminalize possession of small amounts, legalize medical marijuana, or legalize recreational marijuana. A majority of Americans nationally and at the state level choose “decriminalization” or “medical” over “recreational” when given the option. The seeming

⁹⁷ Lauren Dezenski, “Montana, Arizona, New Jersey, South Dakota and Mississippi Approve Marijuana Ballot Measures, CNN Projects,” CNN (Cable News Network, December 7, 2020), <https://www.cnn.com/2020/11/04/politics/marijuana-legalization-2020-states/index.html>.

⁹⁸ Andrew Daniller, “Two-Thirds of Americans Support Marijuana Legalization,” Pew Research Center (Pew Research Center, May 30, 2020), <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/>.

⁹⁹ Emerson College, “US Marijuana Policy Study- January 2022,” Emerson Polling - US Marijuana Policy Study- January 2022, <https://emersonpolling.reportablenews.com/pr/us-marijuana-policy-study-january-2022>.

¹⁰⁰ Kevin Sabet, “Public Polling on Marijuana Is More Complicated than You May Realize: Opinion,” Newsweek (Newsweek, March 1, 2022), <https://www.newsweek.com/public-polling-marijuana-more-complicated-you-may-realize-opinion-1683422>.

disconnect between this policy nuance and the status of 18 states with legal recreational marijuana may best be understood by acknowledging most of these states had simplified referendum votes in which voters did not have options and may not realize a “yes” vote creates a commercial industry. This is evidenced by a majority of towns and cities “opting out” of stores after statewide votes to legalize, such as California, where more than 80% of their localities have taken this action.¹⁰¹

State-Level State of Play

There is a growing movement in states with legal marijuana to address high potency marijuana. Last year, Democratic leadership in the Colorado Assembly and Senate led passage of a bill to tighten regulations on high potency marijuana and study a ban on such products.¹⁰² In Vermont and Connecticut, caps on potency were passed with bipartisan majorities under Democratic leadership. As more research and stories of the harms of high potency marijuana surface, this movement can be expected to grow. Meanwhile, ballot measures continue to be filed in states to legalize marijuana and state legislatures consider such measures legislatively, as well.

Federal State of Play

In 2020, the House of Representatives – under Democratic control – passed a federal marijuana legalization bill called the “MORE Act,” sponsored by Congressman Jerry

¹⁰¹ Annalise Frank, “Cities across Michigan to Consider Variety of Cannabis Ballot Proposals,” Crain's Detroit Business, October 29, 2021, <https://www.crainsdetroit.com/cannabis/cities-across-michigan-vote-variety-cannabis-ballot-proposals-tuesday>.

¹⁰² Thomas Mitchell, “Senate Passes Bill Proposing Medical Marijuana Restrictions, THC Potency Study,” Westword (Westword, September 15, 2021), <https://www.westword.com/marijuana/colorado-senate-passes-bill-proposing-medical-marijuana-restrictions-thc-potency-study-11986232>.

Nadler and more importantly House Speaker Nancy Pelosi, which few Democrats and most Republicans opposed.¹⁰³ The bill has not been brought to a vote this session. In the Senate, Democratic Senate Majority Leader Charles “Chuck” Schumer has vowed to make marijuana legalization a priority and is working with Democratic Senators Booker and Ron Wyden to introduce comprehensive legislation in April.¹⁰⁴ More than a half dozen Democratic Senators have stated their opposition to marijuana legalization this year, and few if any Republican Senators are expected to support legalization – particularly given Republican Senate Minority Leader Mitch McConnell’s repeated opposition to such legislation.¹⁰⁵ Given this dynamic, marijuana legalization is short of the votes required for even a simple majority in the Senate, and far from the likely 60 vote threshold needed.

Lobbying

With the growth of the marijuana industry nationally, multiple associations have formed, and millions are spent lobbying Congress for federal recognition.¹⁰⁶ The NCIA and Cannabis Roundtable are two large associations lobbying heavily for legalization today. Notably, the industry has engaged Brownstein Hyatt Farber Schreck, the top lobbying

¹⁰³ Alicia Wallace, “Cannabis Got a Big Win in Congress, but Legal Weed Isn’t around the Corner,” CNN (Cable News Network, December 4, 2020), <https://www.cnn.com/2020/12/04/business/cannabis-more-act-house-vote/index.html>.

¹⁰⁴ Jordain Carney, “Schumer Asks for Input as Democrats Finalize Cannabis Bill,” TheHill (The Hill, February 10, 2022), <https://thehill.com/homenews/senate/593662-schumer-asks-for-input-as-democrats-finalize-cannabis-bill>.

¹⁰⁵ Nicholas Wu and Natalie Fertig, “Senate Democrats Split over Legalizing Weed,” POLITICO (POLITICO, April 21, 2021), <https://www.politico.com/news/2021/04/20/senate-democrats-weed-legalization-schumer-483747>.

¹⁰⁶ Julie Bykowicz, “Cannabis Goes Corporate: Lobbyists, Unions Seek to Shape Marijuana Industry,” The Wall Street Journal (Dow Jones & Company, May 8, 2021), <https://www.wsj.com/articles/cannabis-goes-corporate-lobbyists-unions-seek-to-shape-marijuana-industry-11620466202>.

firm in Washington, D.C., among other top firms, to advocate on its behalf.¹⁰⁷ Altria, the largest tobacco company in the country, has led their industry's lobbying efforts for legalization.¹⁰⁸ Constellation Brands is doing the same for alcohol.¹⁰⁹ The interests of this industry-led coalition are primarily self-preservation: their members are federally illegal and they seek to mitigate the risk. Notably, the American Bankers Association has begun lobbying on marijuana reform, particularly for federal banking protections as their banks seek to serve the industry.¹¹⁰

For the opposition, the AMA and other public health related groups such as the American Academy of Pediatrics (AAP) have taken positions against legalization. Additionally, the Fraternal Order of Police, National Sheriffs Association, and most other law enforcement groups have joined these groups.¹¹¹ In terms of nonprofit advocacy, SAM, a nonpartisan organization, is the only national organization dedicated to the marijuana issue and opposing legalization. This coalition of organizations and associations typically advocates on the premise of improving public health and protecting families.

¹⁰⁷ Derek Willis, "Representation for U.S. Cannabis Council," ProPublica, August 12, 2015, <https://projects.propublica.org/represent/lobbying/r/300924993>.

¹⁰⁸ Tyler Arnold, "Tobacco Company Altria Backs Legal Marijuana, Gets Involved in Virginia Lobbying," Washington Examiner (Washington Examiner, February 10, 2021), <https://www.washingtonexaminer.com/politics/tobacco-company-altria-backs-legal-marijuana-gets-involved-in-virginia-lobbying>.

¹⁰⁹ Caitlin Oprysko, "Constellation Brands Hires Cannabis Lead," POLITICO, July 29, 2021, <https://www.politico.com/newsletters/politico-influence/2021/07/29/constellation-brands-hires-cannabis-lead-796811>.

¹¹⁰ American Bankers Association, "Cannabis Banking," ABA, January 1, 2022, <https://www.aba.com/advocacy/our-issues/cannabis>.

¹¹¹ David G Evans, "Marijuana Legalization Will Cause Many Problems for Missouri Law Enforcement and Schools," Missouri medicine (Journal of the Missouri State Medical Association, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6690273/>.

Political Opportunities and Risks

The implementation of this policy proposal comes with distinct benefits as well as risks.

Currently, major issues nationally are rising rates of crime, drug use, and violence.¹¹²

President Biden has identified this problem as a top issue during midterms to show voters

he is it.¹¹³ The national crime wave is a critical backdrop to this policy proposal which

cannot be underestimated. Additionally, there is a rising movement of parents and

specifically mothers whose children have been negatively impacted by the trend of

legalization. This proposal provides an avenue to address these two issues. There are two

key risks associated with this proposal: disrupting state-sanctioned programs, and

creating economic hardship, which must be ameliorated if this proposal is implemented.

High national rates of property and violent crime are dominating the political discussion

today, and President Biden is taking some of the blame.^{114,115} While this political

narrative is unfair, the President is taking action to counter the narrative of being soft on

crime.¹¹⁶ On drugs, the Biden administration ordered the termination of funding which

was being used by HHS to fund crack pipes for people with addiction to crack, in

¹¹² Zachary B. Wolf, "Crime Is Becoming One of America's Biggest Political Issues," CNN (Cable News Network, June 23, 2021), <https://www.cnn.com/2021/06/23/politics/what-matters-crime-wave/index.html>.

¹¹³ Mike Memo, "Biden Rolls out Election-Year Crime Messaging in New York," NBCNews.com (NBCUniversal News Group, February 3, 2022), <https://www.nbcnews.com/politics/white-house/biden-roll-out-election-year-crime-messaging-new-york-n1288516>.

¹¹⁴ Rafael A. Mangual, "Opinion | Yes, the Crime Wave Is as Bad as You Think," The Wall Street Journal (Dow Jones & Company, December 8, 2021), <https://www.wsj.com/articles/yes-the-crime-wave-is-as-bad-as-you-think-murder-rate-violent-killings-shootings-defund-police-11638988699>.

¹¹⁵ Dareh Gregorian and Teaganne Finn, "In Dueling Crime Messages, House Democrats Call for Police Funding, GOP Senators Blame Biden," NBCNews.com (NBCUniversal News Group, February 9, 2022), <https://www.nbcnews.com/politics/congress/dueling-crime-messages-house-democrats-call-police-funding-gop-senator-rcna15579>.

¹¹⁶ Ibid.

response to charges of enabling use amidst an addiction and crime crisis.¹¹⁷

Implementation of this proposal gives the President a chance to take a proactive measure to show he is taking nexus of drugs and crime seriously. In response to politically charged attacks that he supports the “Defund the Police” movement, he can ramp up enforcement of a key law and order problem being faced by the country today. The move could serve to bolster the President and his party’s credentials as being capable to address the country’s societal problems at a time where his approval rating is in the 30-40% range.¹¹⁸ Implementation of the proposal will likely garner attacks that the President is seeking to bring back the “War on Drugs,” and criminalizing people with addiction or targeting minority communities. These attacks can be easily disproved by demonstrating the narrowly targeted nature of the proposal, focusing on large operators engaged in serious public harm. Communications can also focus on the lack of minority-ownership of these large companies, and the predatory ways in which they disadvantaged communities.

Over the past decade of marijuana industry growth, the harms of the new, highly potent forms of the drug, particularly on youth, have garnered more public attention. This is unsurprising given the rising rates of addiction to the drug among youth in legal states. Regrettably, more youth are dying as a result. Laura Stack, a mother from Colorado, recently received a feature story in *People* magazine in the aftermath of the suicide of her

¹¹⁷ Sheryl Gay Stolberg, “Uprouar over 'Crack Pipes' Puts Biden Drug Strategy At Risk,” The New York Times (The New York Times, February 21, 2022), <https://www.nytimes.com/2022/02/21/us/politics/biden-harm-reduction-crack-pipes.html>.

¹¹⁸ Nate Silver, “How Popular Is Joe Biden?,” FiveThirtyEight, March 11, 2022, <https://projects.fivethirtyeight.com/biden-approval-rating/>.

son, Johnny, who jumped from a parking garage after “dabbing” high potency marijuana.¹¹⁹



Figure 7: Laura Stack, with picture of son, Johnny, in story written by People magazine

In the aftermath, Laura started an organization called Johnny’s Ambassadors, which now has a national following of parents and others affected by high potency marijuana.¹²⁰ She is not alone. Corinne Gasper, a mother from Ohio, lost her daughter Jennifer to a marijuana-impaired driver driving over 80 miles per hour. She started her own organization, Jennifer’s Messengers, another national parents’ organization seeking to bring light to the harms of legalization.¹²¹ These are two examples of many more parents speaking out about the harms legalization has brought for youth and public safety. Implementation of this policy proposal will directly address the harms of high potency marijuana and show President Biden cares about the hardship the industry has caused

¹¹⁹ Johnny Dodd, “Mom Loses Son, 19, to Suicide and Warns Others of High-Potency Marijuana Addiction: 'I'm so Angry',” PEOPLE.com (People Magazine, October 15, 2021), <https://people.com/health/mom-loses-son-age-to-suicide-and-warns-others-of-his-high-potency-marijuana-addiction/>.

¹²⁰ Johnny Dodd, “Mom Loses Son, 19, to Suicide and Warns Others of High-Potency Marijuana Addiction: 'I'm so Angry',” PEOPLE.com (People Magazine, October 15, 2021), <https://people.com/health/mom-loses-son-age-to-suicide-and-warns-others-of-his-high-potency-marijuana-addiction/>.

¹²¹ Jennifer's Messengers, “Jennifer's Story,” Jennifer's Messengers, May 11, 2021, <https://jennifersmessengers.org/jennifers-story/>.

families across the country. A central benefit of focusing on the families harmed by high potency marijuana is the narrow space provided for political attacks. While opposition may debate economic costs or issues or prioritization, they will suffer politically for attacking the President for defending parents and youth from serious harm.

Historically, parents have successfully led the fight for substantive policy change. Candace Lightner, a mother who lost her daughter to a drunk driver, is largely attributed with America's drunk driving laws as well as becoming the legendary founder of Mothers Against Drunk Driving (MADD).¹²² Lightner was described by *People* magazine as the "conscience of the nation," in a story not unlike their profile of Laura Stack.¹²³ For this reason, and in response to the rising national temperature on issues of marijuana potency and harms, the President should ensure these parents are front and center of his announcement and public relations strategy throughout policy implementation. Critics who claim a majority of Americans support legalization of marijuana can be debunked by pointing to the proposal's exclusive focus on large operators who are primarily causing the harms discussed by mothers like Stack and Gasper.

The greatest political downside to this proposal is the fact that companies in violation of this proposal's priorities are legal under the state laws where they operate. In essence, opponents could claim the President is trading one constitutional crisis for another: to-

¹²² Mothers Against Drunk Driving, "Founder of MADD: Founder of We Save Lives: Candace Candy Lightner," Mothers Against Drunk Driving, January 1, 2022, <https://www.candacelightner.com/Meet-Candace/Biography>.

¹²³ *Ibid.*

date unprecedented broadscale enforcement of marijuana laws in states. Federal action would likely set off a domino effect of public relations campaigns, advocacy, and legal challenges presented by both state governments as well as the industry. Additionally, opponents of this proposal will claim the federal government is overstepping its authority and out of step with public opinion. When then-Attorney General Jeff Sessions rescinded the Cole Memo in 2018, then-U.S. Senator Cory Gardner from Colorado, a Republican, advocated to stop the federal government from enforcing the law against marijuana companies in his state.¹²⁴ Enforcement never took place after Sessions' recission, but with this proposal fully implemented, an even greater response can be expected from federal representatives of legal states.

This is a cost which will be impossible to fully eliminate, but it can be mitigated. The White House can pre-empt and respond to such criticisms by stating that DOJ is not being asked to shut down entire state programs. The proposal is specifically aimed at stopping bad actors who are causing measurable harm to the public, particularly youth. Emphasis can be placed on states having failed to manage a wide array of the harms of legalization, such as California where the program is being described as on the verge of "implosion."¹²⁵ A publicly communicated goal of mitigating the harms of these policies while scientists continue to research how these state experiments are going can also help to reduce the temperature of the political debate on federal enforcement.

¹²⁴ Julia Kimani Burnham, "Jeff Sessions Ends Policy That Let Legal Pot Flourish," CBS News (CBS Interactive, January 5, 2018), <https://www.cbsnews.com/news/jeff-sessions-marijuana-policy-announcement/>.

¹²⁵ Joyce E Cutler, "California Cannabis Pleads for Tax Breaks, Warns of Implosion," Bloomberg Tax, December 17, 2021, <https://news.bloombergtax.com/daily-tax-report-state/california-cannabis-pleads-for-tax-breaks-warns-of-implosion>.

A second key risk to this proposal involves the potential it has to instigate Congress to federally legalize marijuana, or at minimum pass a rider preventing funding for DOJ to enforce laws on recreational marijuana programs in the same vein of the current rider preventing enforcement on medical programs. With the substantial industry lobbying footprint in Washington, D.C., and 18 states where it is fully legal, there will be a significant effort to pass some form of legislative protection from DOJ's actions under this proposal. If successful, these actions could be politically damaging to the President by repudiating his actions before they can begin and delegitimizing the political case built to reduce the public health harms of legalization. While this is a distinct possibility, it is unlikely to materialize. Currently, a minority of states have a fully vested interest in protecting large marijuana companies. This is not likely to be enough to pass landmark federal legalization legislation through both houses of Congress, particularly where the U.S. Senate is evenly split, and a super majority is needed. Additionally, with standalone legislation, the President has the power to veto and Congress would be unlikely to muster the votes needed to override it.

The best political strategy for successful implementation of this proposal will be for the President to consistently couch the actions in terms of addressing the crisis of crime and listening to the cries of mothers and families across the nation who have lost loved ones to high potency marijuana and a predatory industry. Press conferences, opinion editorials, advertisements, and other public relations mechanisms should prominently display the parent groups mentioned and as many families, youth, and others victimized by the

industry as possible. Pictures of the products being sold by the marijuana companies targeted, along with names and photos of the victims, must be elevated to both educate the public and insulate the President from attacks. Additionally, the AMA, AAP, and other public health organizations should be engaged to elevate the narrative of the education campaign on marijuana and the scientific harms of highly potent marijuana. If the President stands on the side of youth, mothers, scientists, and public health, he can expect to achieve a political victory over private interests.

Recommendation

The President should order implementation of this proposal as soon as possible before midterm elections. This proposal requires ordering DOJ to direct U.S. Attorneys to prioritize enforcement of federal laws on large marijuana companies engaged in serious public harm by producing dangerously high potency marijuana products and promoting them to youth. As a part of this proposal, the President will ask Congress for \$50 million to fund a national education campaign on the harms of marijuana. The implementation of this campaign will entail coordinated communication and policy efforts particularly for the White House, ONDCP, and HHS. The focus of this campaign should be to communicate the public harm of the marijuana industry clearly and effectively, as well as the key stakeholders: mothers, youth, and others who are its victims.

The greatest concern with this proposal is the notion of trading one constitutional crisis – the conflict of federal and state laws on marijuana – for another: federal infringement on

state autonomy. Implementation of this proposal will certainly cause protests from the industry as well as most states where it is legal. This crisis will be impossible to eliminate, but it can be ameliorated through message and policy discipline. The proposal is narrowly targeted at the largest and worst violators of public health and safety. The stakeholders of primary concern to the President are families, youth, and victims of the industry. While some may argue about infringement, the simple fact is the federal government will not be putting a stop to entire state programs under this proposal, and companies will either comply with the priorities of this proposal or face prosecution.

The strongest reasons for the acting upon this proposal are the current acute levels of national interest in resolving drug and crime problems, as well as the rising magnitude and public coverage of marijuana's harms on families. The President needs to act from a policy perspective to rectify the crisis between federal and state law, and to address failed state regulation of the industry. He also should act from a political perspective to show the public he stands with victims of predatory industry practices and against rising crime. Given the attempts by political opponents to claim he is anti-law enforcement, such action will help to undercut the narrative. Parents and their organizations raising the alarm about marijuana are growing in size and in impact. The President should align himself with this movement.

Some may ask why the President does not ask for total enforcement of the law to eliminate state marijuana programs entirely. Ultimately, such attempts were made in the early years of marijuana legalization as with the Clinton and Obama Administrations

before the Cole Memo and were unsuccessful. The Cole Memo, an attempt to narrow enforcement priorities to eight, was also unsuccessful and too broad. This proposal provides two specific enforcement priorities and allows prosecutors to focus on the acute problems with legalization which also happen to be garnering most of the media attention.

It took society nearly a century to realize the magnitude of harm the tobacco industry was causing. Today, more than 500,000 Americans still die from products sold and marketed unethically by the industry. Already in states allowing the marijuana industry to grow, we see a familiar trend of public health harms and irresponsible promotion of products toward youth. President Biden should implement this proposal immediately to learn from history with other vice drugs and slow the growth of what could amount to an even larger public health crisis in coming years.

Curriculum Vitae

Luke Niforatos was born June 19th, 1990, in Chicago, Illinois, and now lives in Denver, Colorado. In 2012, he graduated from the University of Denver with a Bachelor of Arts in Communication, minoring in Political Science and International Studies. After graduation, Luke started working in nonprofit health care, helping clinics and hospitals better serve low-income and uninsured populations. He also started a successful health care technology company. In 2017, Luke transitioned to policy with a focus on drugs as the eventual Executive Vice President of Smart Approaches to Marijuana (SAM), America's top marijuana-focused, public health-based policy organization. His work has been featured by media outlets such as *CNBC* and *Fox News*, as well as *The Gazette* and *Colorado Politics*. He has spoken at events held by *The Economist*, the United Nations' Commission on Narcotic Drugs, and in dozens of town halls across the United States on the subject of drug policy. Luke's work has appeared in almost every major national media outlet, and his op-eds are regularly published across the U.S.