



Global Alliance for Cannabis Commerce

RACIAL JUSTICE IN CANNABIS PROHIBITION AND THE FEDERAL
ROLE IN THE NEW GLOBAL CANNABIS ECONOMY

**Testimony submitted to the Committee on the Judiciary
Subcommittee on Subcommittee on Crime, Terrorism,
and Homeland Security**

**For the Hearing on “Marijuana Laws in America: Racial Justice
and the Need for Reform”**

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GACC is a 501(c)(6) not-for-profit trade organization

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Chairwoman Bass and members of the Subcommittee on Crime, Terrorism, and Homeland Security, thank you for hosting this hearing on the pressing issues of racial justice and the need for reform in federal cannabis laws. The Global Alliance for Cannabis Commerce is honored to offer its testimony on these matters today.

The Global Alliance for Cannabis Commerce (GACC) is a California-based 501(c)(6) trade organization representing over a billion dollars of legal global cannabis businesses. GACC advocates in front of government policymakers and legislators to support legalizing and regulating the cultivation, manufacture, distribution, and use of medical and adult-use cannabis products globally. GACC further works to ensure that medical and adult users of cannabis are not improperly stigmatized for their ordinary needs and activities.

GACC members believe that it is impossible to talk about the inevitable end of federal cannabis prohibition without discussing a way to rectify the issues that cannabis prohibition has caused in American society. Indeed, it is our organization's Corporate Social Responsibility position that "it is the specific responsibility of the cannabis industry to support legislation and other measures to mitigate and compensate those most harmed by" cannabis prohibition.

Federal cannabis prohibition began in 1937 with the passage of the Marihuana Tax Act of 1937,¹ a federal law that was unanimously overturned by the Supreme Court in 1969 in *Leary v. United States* for requiring self-crimination under the Fifth Amendment—famously, hemp farmers had to bring their crop for inspection to D.C. to receive a license, only to be arrested upon presenting their crop for transporting "marihuana" in interstate commerce.²

The 1937 Act was passed over the objections of the American Medical Association and effectively de-listed cannabis from the *United States Pharmacopeia*, in which it had been listed since 1870.³ Cannabis had, before 1937, been regulated as a drug in interstate commerce under the 1906 Pure Food and Drug Act and Harrison Narcotics Act of 1914.⁴ As a consequence of the 1937 law, cannabis was excluded from the 1938 Food, Drug, and Cosmetic Act's regulatory scheme. Cannabis prohibition took hold in 1937 on the heels of a propaganda campaign engineered by the Federal Bureau of Narcotics under Harry J. Anslinger and

¹ Marihuana Tax Act of 1937, Pub. L. 75-238, 50 Stat. 551 (Aug. 2, 1937).

² *Leary v. United States*, 395 U.S. 6, 17 (1969).

³ *See, e.g.*, PHARMECOPŒIA OF THE UNITED STATES (5th Decennial Rev., Philadelphia, J.B. Lippincott & Co. 1877); PHARMECOPŒIA OF THE UNITED STATES (11th Decennial Rev., Philadelphia, J.B. Lippincott & Co. 1936).

⁴ *See* Harrison Narcotics Act, Pub. L. No. 223, 38 Stat. 785 (Dec. 17, 1914). Pub. L. 59-384, 34 Stat. 768 (June 30, 1906)

William Randolph Hearst's media empire, and aggrandized by media outlets jumping in on the "marihuana" frenzy.⁵

In response to the unanimous 1969 *Leary* decision striking down federal cannabis prohibition, in 1970 Congress passed and President Richard M. Nixon signed into law the Controlled Substances Act.⁶ The Controlled Substances Act listed, and to this day lists cannabis as "marihuana," a Schedule I Controlled Substance, the most restrictive designation possible, and creates a nationwide cannabis prohibition.⁷

Members of Congress, in thinking about this history, should be cognizant that the federal government's agents in conducting their anti-cannabis propaganda campaign in the 1930s expressly linked the "evil" of cannabis to crime committed by "Mexicans, Spaniards, Latin-Americans, Greeks, or Negroes" in order to tie this lobbying effort to the racial tensions of the period—in government-printed public documents and in government-funded projects.⁸ Federal cannabis prohibition was born in facial racism. Whatever one feels about the merits of cannabis legalization or federal drug policy in general today, that is a historical fact, and one Americans must confront as we work towards ending this misguided policy in recognizing its roots in deeply flawed public consensus. As one may predict of a policy born in demonstrable, facial government discrimination, it has effects which disproportionately harm those targeted by its original propaganda campaign. The American Civil Liberties Union has pointed out, statistically speaking "Blacks are 3.73 times more likely than whites to be arrested for marijuana."⁹ This has led to higher incarceration rates for minorities for cannabis offenses.

⁵ *E.g.*, RICHARD J. BONNIE & CHARLES H. WHITEHEAD, *THE MARIHUANA CONVICTION: A HISTORY OF MARIJUANA PROHIBITION IN THE UNITED STATES 100–02* (University Press of Virginia 1974).

⁶ *See* Controlled Substances Act, Pub. L. 91-513, 84 Stat. 1236 (Oct. 27, 1970) (codified at 21 U.S.C. ch. 13).

⁷ 21 U.S.C. §§ 802(16), 812; *see also generally Gonzales v. Raich*, 545 U.S. 1 (2005).

⁸ BONNIE & WHITEHEAD, *supra* note 5, at 100 (discussing correspondence with and quoting an official Federal Bureau of Narcotics response to a reporter inquiry); *see also* Kyle Schmidlin, Column: 'War On Drugs' Merely Fights The Symptoms Of A Faulty System, *CBSNews* (Sept. 13, 2008, 7:19am), <https://www.cbsnews.com/news/column-war-on-drugs-merely-fights-the-symptoms-of-a-faulty-system/> ("Quotes attributable to [Commissioner] Anslinger include (and there are certainly more than these): 'Reefer makes darkies think they're as good as white men.' 'You smoke a joint and you're likely to kill your brother.' And my personal favorite, 'There are 100,000 total marijuana smokers in the U.S., and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing result from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers and any others.'").

⁹ American Civil Liberties Union, *Marijuana Arrests By the Numbers*, <https://www.aclu.org/gallery/marijuana-arrests-numbers>.

The need for reform is clear. Thirty-four states allow and regulate medical-use cannabis; eleven more do so with adult use—numbers only expected to increase heading into 2020 based on polling data and political trends. The federal government’s prohibitionist stance on cannabis is no longer a tenable position. The question now is not *if* reform will happen federally, but *how*.

Both parties should be congratulated and encouraged for their good-faith efforts in reaching bipartisan consensus on how to handle remedying those harms. In order to assist in those efforts, the Global Alliance for Cannabis Commerce has publicly released model U.S. federal cannabis legislation that comprehensively and wholly addresses how to regulate cannabis on a federal level, including components to ensure that communities disproportionately harmed by prohibition are not left out from the economic opportunities presented by its legalization.¹⁰ GACC’s model legislation takes from some of the best practices that have strong bipartisan support from proposals currently underway. It also adds to them by directing the Attorney General to individually review each and every federal marijuana conviction where the offender is currently serving and recommending action on clemency or pardon to the President.

True reform for the existing businesses in 33 states, the District of Columbia and communities of color means a framework that does not unnecessarily wreak havoc on existing relationships and business practices, and that adopts bipartisan best practices towards fixing the harms of cannabis prohibition, and that employs the constitutional powers of the federal government to ensure a functional, free, and fair market in cannabis. Improvident or ill-considered federal policy in legalizing cannabis can have dire, if unintended, consequences for minority-owned and non-minority-owned businesses alike.

The *sine qua non* of what industry and consumers need from the federal government for cannabis reform is clear: legalize and regulate interstate and international trade in cannabis products under its Article I, Section 8 Commerce Clause powers. In doing so, Congress could respect both the state right to choose to keep cannabis prohibited within its borders, and the state right to interstate trade of the thirty-four other states that legalized cannabis.

Right now, there are thirty-four balkanized legal state markets in the United States in cannabis. As Ilya Shapiro, Director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute pointed out in his article *The Case for Allowing Interstate Trade Among Marijuana-Legal States*, “[b]y default, to succeed, any business has to be vertically integrated from seed to sale in each state. This limits competition and artificially inflates prices. Consumers, particularly elderly

¹⁰ See generally MODEL U.S. FEDERAL CANNABIS REFORM ACT (GACC 2019), *reprinted in* Appendix A; Appendix B (Section by Section of GACC Model Legislation).

patients, many of whom rely on cannabis products to mitigate health concerns, will be at the mercy of businesses that don't have to respond to market forces.”¹¹

This balkanization has also led to incredible supply-demand imbalances within the United States itself, threatening state-based cannabis markets, and remediable only by the federal government exercising its commerce powers. For example, on the supply side, according to a 2019 Cannabis crop projection, California cultivators “can produce up to 9 million pounds of crop every year, but the permitted wholesale market can realistically support 1.8 million to 2.2 million pounds,” which potentially crash the market” in California.¹² Oregon has six-years’ worth of stock,¹³ and the state government has approved legislation for interstate commerce that only becomes effective upon only federal reform.¹⁴

Conversely, on the demand side, Canadian dispensaries continuously see shortages that could easily be filled by reducing excess West Coast stock.¹⁵ Nevada has seen shortages as well.¹⁶ Louisiana pharmacists—complaining of watching “patients suffer...desperate for [cannabis] medication”—demanded their state allow medical cannabis to be available.¹⁷ Illinois, the latest state to legalize, also is projected to face shortages for consumers.¹⁸

¹¹ Ilya Shapiro, The Case for Allowing Interstate Trade Among Marijuana-Legal States, *The Federalist* (Mar. 13, 2019), <https://thefederalist.com/2019/03/13/case-allowing-interstate-trade-among-marijuana-legal-states/>, reprinted in Appendix C

¹² Andrew Sheeler, California is growing so much marijuana it could crash the market, *Sacramento Bee* (Mar. 19, 2019 11:04am), <https://www.sacbee.com/news/politics-government/capitol-alert/article228120439.html>.

¹³ Kristian Foden-Vencil, Oregon Is Producing Twice As Much Cannabis As People Are Using, *OPB* (Jan. 31, 2019, 12:00pm), <https://www.opb.org/news/article/oregon-cannabis-surplus-2019/>.

¹⁴ S.B. 582, 80th Leg. Assemb., Reg. Sess. (Or. 2019); Suhauna Hussain, Oregon has too much cannabis. Two laws may help the state manage its surplus, *L.A. Times* (June 24, 2019, 3:00am), <https://www.latimes.com/nation/la-na-oregon-legislature-tackles-supply-marijuana-20190624-story.html>.

¹⁵ *E.g.*, Paul Barach, What's Up With Canada's Nationwide Cannabis Shortages? *PotGuide.com* (Dec. 26, 2018), <https://potguide.com/pot-guide-marijuana-news/article/whats-up-with-canadas-nationwide-cannabis-shortages/>.

¹⁶ *E.g.*, Melina Robinson, Nevada sold out of legal marijuana so quickly, the government used a 'statement of emergency' to bring in more weed, *Business Insider* (Jul. 13, 2017, 9:21pm), <https://www.businessinsider.com/nevada-marijuana-shortage-statement-of-emergency-2017-7>.

¹⁷ Melinda Deslatte, Louisiana medical marijuana backers demand product by May 15, *AP News* (Mar. 25, 2019), <https://apnews.com/d3de7002288148deb521be10c0f3eea1>.

¹⁸ Kris Krane, Illinois Legalization Is Historic, But Good Luck Finding Cannabis To Buy, *Forbes* (Jun 25, 2019, 12:03pm), <https://www.forbes.com/sites/kriskrane/2019/06/25/illinois-legalization-is-historic-but-good-luck-finding-cannabis-to-buy/#16ce50c9e253>.

Legal operators in states operate without the benefits of federal regulation in the areas of agriculture, pesticide control, food and drug adulteration, and finance— areas where federal regulatory clarity has been a chief component of consumer confidence and commercial success. Without federal legalization and regulation, it is unlikely that legal businesses will be able to fully access the financial sector. As Dan Stipano recently told *American Banker*, “Anything short of legalization on the federal level will probably not be enough. ... Financial institutions are caught in the middle.”¹⁹ It is even less likely that U.S. businesses will be in a position to compete with the emerging international cannabis markets in Canada, Mexico, Europe, Israel, Africa, the Caribbean, and South America.

Moreover, as I recently pointed out in the *San Francisco Chronicle*, the federal government is setting these state-legal cannabis businesses up for failure by ensuring that they cannot compete with black market operators. It is an “inescapable consequence of supply and demand.”²⁰

“[B]usinesses cannot reduce prices by scaling up the production of cannabis and reaching a larger volume of the consuming population. This gap in federal law forces legal businesses to compete with black-market operators, which have the unfair advantages of both lower overhead costs per unit and a significantly larger market through their disregard of federal interstate commerce laws. Illegal producers’ costs and prices are largely fixed by their illicit nature; they cannot build large, sustainable farms to reduce per-unit costs because of the inherently unstable nature of their business. Legal businesses in the United States, aided by the protections of the commerce clause, can easily compete with and replace the black market if given the chance. Federal law can easily be changed to reach this goal.”²¹

Indeed, minority members of the community who take the steps to become legal operators face an economic environment where the black market has a competitive advantage based on outdated federal laws forcing legal operators to compete only within their own state, as opposed to black market operators which reach the full U.S. market by ignoring federal laws.

Congress also should not leave behind our Veterans, a community that would strongly benefit from access to cannabis to treat PTSD and long-term pain from

¹⁹ Neil Haggerty, Legalizing pot may be only way to lift cloud over pot banking, *American Banker* (June 11 2019, 9:00pm), <https://www.americanbanker.com/news/legalizing-pot-may-be-only-way-to-lift-cloud-over-pot-banking>, reprinted in Appendix D.

²⁰ Randal John Meyer, Feds must join California in getting #weedwise on black market, *San Fran. Chron.* (July 2, 2019), <https://www.sfchronicle.com/opinion/openforum/article/Feds-must-join-California-in-getting-weedwise-on-14065415.php>, reprinted in Appendix E.

²¹ *Id.*

battlefield injuries. As officials from the Veterans' Administration have testified in recent hearings, VA Doctors and programs operate on federal property, using federal resources, employing federal employees, on federal time. The concerns of veteran's access are not addresses by intra-state-only policies, such as the STATES Act or CARERS Act, or policies that do not create a federal framework for access.

Congress is no longer debating *if* federal cannabis prohibition will end—it is—but *how* to end it. Accordingly, Congress should be conscious of the racialized history and disparate effects of cannabis prohibition and take its cues from how the federal government ended alcohol prohibition in the Federal Alcohol Administration Act. Namely, by using its Commerce Clause powers to build a competitive and vibrant interstate and international trade in American goods.