



November 18, 2022

Senate Majority Leader Chuck Schumer
322 Hart Senate Office Building
Washington, DC 20510

Senator Cory Booker
717 Hart Senate Office Building
Washington, DC 20510

Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, DC 20510

Re: Endorsement of the Cannabis Administration and Opportunity Act (CAOA) (S.4591) and Comments in Response to Bill

Dear Senators Schumer, Booker, and Wyden:

Thank you for your tenacious efforts to end the prohibition of marijuana at the federal level and to undo the criminalization that has inflicted harm on communities of color in the United States for decades. The time has never been more ripe for Congress to finally act to end marijuana prohibition and begin to repair the harm caused to individuals and communities. The October 6, 2022 announcement from President Biden is a sign that the administration is open to Congressional marijuana legislation rooted in criminal justice reform; however, the possibility of administrative rescheduling or removal of marijuana from the Controlled Substances Act could subject the existing state programs to greater federal interference than under the status quo. This possibility underscores the necessity to pass comprehensive descheduling legislation before those potential outcomes.

The Marijuana Justice Coalition proudly endorses the Cannabis Administration and Opportunity Act (CAOA) (S.4591). We commit to building support for this historic legislation in the Senate. We appreciate the changes that were made to the introduced legislation from the CAOA discussion draft to make it a stronger policy reform, but we believe the bill can still be improved to more fully repair the harms caused by federal criminalization and create a more equitable framework moving forward, as outlined by the comments listed below. We look forward to continuing to meet and work with your offices to make improvements.

Below are our comments in response to the CAOA as introduced. (Where we offer suggested language related to our comments we note the page number of the legislative text where our amendments can be found.)

Overall Framing and Approach

The regulatory approach taken by the CAO is generally modeled on the federal approach taken to regulate alcohol and tobacco. While the CAO includes critical elements to end federal criminalization and to undo and repair many of the harms resulting from criminalization, it seeks to regulate cannabis like a vice, meaning a consumer product with potential harms to public health and huge economic potential.

We recommend an approach that does not merely include reparative justice, health equity, and community reinvestment as a subset of a larger policy reform, but rather an approach where these components are the *primary* goal. Cannabis is not alcohol or tobacco. In addition to having a different health profile, decades of racist laws and failed policies related to cannabis have resulted in enormous harm to communities. Repairing that harm is going to require state policy aligning with federal reform in complex ways. While there are important lessons to draw from the regulation of alcohol and tobacco, this is an opportunity to build a new equitable, rights-respecting model for cannabis; to create a better approach that centers those most impacted by the war on drugs.

There is no reason why federal cannabis reform must allow for unrestricted commercialization and interstate commerce if creating limits helps to achieve important public policy goals. Among other potential benefits, limits can support social equity policies carefully crafted and implemented by the various states.

The goals for federal reform should be clearly articulated--health, equity, justice, community reinvestment-- and the policy design should be focused solely on achieving these common sense goals. Below are suggestions from the Marijuana Justice Coalition on how CAO can better achieve these goals.

Findings (Sec. 2)

- We recommend amending the language related to the costs of state permitting and licensing to reflect that in some instances licensing can cost over several million dollars.

Decriminalization of Cannabis, Recognition of State Laws Controlling Cannabis

Sentencing Reconsideration (Sec. 101(d)(3)-(4))

- We recommend clarifying that the prior convictions that will be eligible for sentencing reconsideration include convictions where cannabis was an element of the offense or where cannabis or a prior cannabis related conviction was used during sentencing to increase the length of the sentence. (See suggested amendments on page 19-20.)

Special Rule for Federal Employee Drug Testing (Sec. 101(e))

- We oppose the continued inclusion of cannabis for the purpose of drug testing federal employees and recommend the removal of this provision. This policy unfairly and unnecessarily harms law abiding federal employees, harms federal agencies by depriving them of otherwise well qualified, high performing employees, lacks any evidentiary basis, and risks having a racially disparate impact. The language should, at minimum, be narrowed to only include safety sensitive positions.
- We recommend addressing the concerns expressed by the GAO report on Executive Order 12564, including: 1) the need for uniformity to assure that similarly situated employees are treated similarly; 2) that employees' rights are addressed; and 3) the need for continuing, centralized oversight; and to allow a right to appeal.
- Additionally, there is no reason why in the exception the agency head must deem cannabis to be a Schedule I controlled substance rather than a controlled substance more generally. This serves only to reinforce the misplacement of cannabis in Schedule I. (See suggested amendments on page 21.)

Agency Function (Sec. 102)

- We recommend the creation of a central office that oversees the entire federal cannabis regulatory program that is focused on ensuring equity and that is responsible for evaluating outcomes. The role of the Cannabis Justice Office that is created to oversee the Community Reinvestment Grant program could be expanded to oversee and coordinate the role of all the relevant federal agencies in implementing the CAO so that justice and equity are centered and initially considered in all aspects of reform.
- Lack of a central cannabis regulatory office risks reduced coordination and alignment across multiple agencies and increases the chance that the principles of equity that are central to the purpose of the programs are not infused through every aspect of implementation and evaluation.
- The mission and directive of all federal agencies should be realigned to achieve the goals of the CAO, including the Office of National Drug Control Policy and all other agencies that touch or enforce existing cannabis laws and regulations in any manner.

States' Rights (Sec. 111)

- We are concerned about the creation of new federal penalties related to transport of cannabis into a state where it remains illegal under state law, especially when no penalty is specified.
- We recommend specifically exercising Congress's Commerce Clause powers to provide states explicit authority to enable states to prevent out-of-state actors from disrupting state programs that foster small businesses and social equity programs. (See suggested amendments on page 26.)
- We recommend adding clarifying language individuals shall not be subject to penalties for transporting personal use amounts that were purchased or personally cultivated in one state into another state that has different labeling and testing requirements.

Diversion of Cannabis (Sec. 112)

- We appreciate the reduction in potential incarceration from the discussion draft, but we recommend that the penalty be a fine only that is graduated based on the value or the volume of cannabis. A \$50,000 fine may be inconsequential to a large trafficking operation while crushing to a small actor. (See suggested amendments on page 32.)
- We recommend clarifying that the purpose of accounting for the size of the business in promulgating regulations is to protect small businesses from overly onerous regulations. (See suggested amendments on page 35.)
- We recommend robust consideration and exceptions from regulatory track, trace, and taxation requirements for noncommercial cultivation allowed under state laws and state medical cannabis programs. This issue is alluded to in Sec. 112(b)(6) but these activities need to be more concretely and comprehensively protected.
- We recommend language clarifying that individuals acting in compliance with state medical cannabis caregiver models shall not be considered in violation of this section.

Research, Training, and Prevention

Social Impact of Cannabis Legalization Study (Sec. 201)

- We support the intention to collect data and study the outcomes of federal cannabis law reform. However, the scope should be more expansive and study a broader range of issues. The evaluation should include outcomes related to:
 - Law enforcement spending and policing practices
 - Disparate impact in enforcement, school discipline, and health outcomes
 - Social equity program outcomes
- We recommend that baseline data is collected and produced by relevant agencies prior to the implementation of federal reform. (See suggested amendments on page 39-41.)

Biomedical Research on Cannabis (Sec. 202)

- We recommend that the biomedical research topics for which funding is available include more than two potential benefits of cannabis, when there are, in fact, potentially many more.
- We recommend allocating a specific amount of the research funding to studies supporting the treatment and potential efficacy of cannabis as well as allocating funds to support the development of good manufacturing practices by small companies. (See suggested amendments on page 43.)
- We would recommend additional focus towards studying the health efficacy of medical marijuana on health conditions that disproportionately impact communities of color.

Trans-NIH Cannabis Consortium (Sec. 207)

- We recommend including reporting on the institutions conducting FDA and IRB approved research on cannabis that are threatened with denial or withholding of collection from the Center for Medicare or Medicaid services or federal research funding. (See suggested amendments on page 55.)

Cannabis Research Interagency Advisory Committee (Sec. 208)

- We recommend phasing out the role of the DEA on the advisory committee once cannabis regulation is completely transferred away from that agency. (See suggested amendments on page 56.)
- We recommend adding to the committee responsibilities to encourage multi-state clinical studies and procedures for cannabis clinical trials that can be used in all states and territories. (See suggested amendments on page 58.)
- We recommend to prioritize addressing health disparities through medical marijuana research and product development to address various health illnesses that disproportionately impact communities of color.

Department of Veterans Affairs Clinical Trials (Sec. 210)

- We recommend consideration as to whether clinical trials for veterans and traumatic brain injury and problematic substance use should be added to this section.
- We oppose the exclusion of veterans who have or are at risk for substance use disorder from the clinical trials. (See suggested amendments on page 68.)
- We recommend amending the Uniform Code of Military Justice (UCMJ) expungements to be consistent with federal descheduling, including requiring the Department of Defense to institute an automatic review process (similar to after the repeal of Don't Ask, Don't Tell) where servicemembers with an other-than-honorable discharge (OTH) due to a cannabis offense have their status upgraded. Veterans can be denied healthcare, education, and other benefits because of their OTH, which factors in to veteran suicide and overdose rates.

Cannabis-Related Highway Safety Research (Sec. 224)

- We oppose the formation of new courts to address issues of driving while intoxicated. These issues are best handled in the context of traditional courts and prevention efforts rather than the creation of a new type of court to address this specific issue. (See suggested amendments on page 83.)
- We oppose the requirement that states have an open container offense for cannabis as a condition of receiving grants. Open container laws such as these should not be encouraged as they reinforce unjustified car searches that are often carried out in a racially disparate manner. (See suggested amendments on page 86.)

Restorative Justice and Opportunity Programs

Opportunity Trust Fund Program (Sec. 301)

- We support expanding the role of the Cannabis Justice Office (Sec. 110) to oversee and coordinate the implementation and administration of the CAO across all federal agencies to ensure justice and equity are centered throughout.

Comprehensive Opioid, Stimulant, and Substance Use Disorder Program (Sec. 302)

- We support increased funding for opioid use disorder and substance use disorder. However, these funds should not be used to divert more people into the criminal justice system, including drug courts. Rather, funds under this program should be limited to

supporting education and health services. For instance, we support limiting funding under this program specifically for the purposes set out in 34 US Code § 10701 (3) to provide training and resources for first responders on carrying and administering opioid overdose reversal drugs and (5) to develop, implement, and expand medication-assisted treatment programs. (See suggested amendments on page 101.)

Demographic Data of Cannabis Business Owners and Employees (Sec. 304)

- We recommend that the Bureau of Labor Statistics also collect demographic data on the denial of licenses to properly determine if discrimination is evident in the licensing process. (See suggested amendments on page 109.)
- We recommend adding a definition of owner to clarify to whom restrictions related to ownership qualifications and limitations apply. (See suggested amendments on page 110.)

Resentencing and Expungement (Sec. 311)

- We recommend adding in a firm deadline for notification of 90 days rather than simply saying “to the extent practicable.” (See suggested amendments on page 120.)
- We recommend adding a provision to the section on the effect of expungement that makes the use of an expunged record to deny a benefit unlawful and states that a record that is subject to expungement under the CAO A cannot be considered accurate or reliable. (See suggested amendments on page 122.)
- We recommend not excluding individuals who received an aggravating role adjustment pursuant to the United States Sentencing Guideline 3B1.1(a) in relation to a federal cannabis offense conviction from eligibility for expungement of that conviction. (Sec. 311(d)). It is a misconception that individuals who receive this adjustment are large scale drug traffickers. This enhancement is applied broadly in practice and captures many lower level actors. If this exclusion is left in, we recommend that it is limited to those with leadership roles and that the burden of showing that the person should not qualify rest with the government. (See suggested amendments on page 123.)

No Discrimination in the Provision of a Federal Public Benefit on the Basis of Cannabis (Sec. 312)

- We recommend that the language clarify that the protection for federal benefits applies retroactively and include past cannabis use and convictions prior to the enactment of the CAO A and that the CAO A prevents the denial of benefits based on state law cannabis convictions (in addition to federal cannabis convictions.) (Sec. 312)(a)). We recommend stating that individuals who were denied federal benefits in the past based on cannabis can now re-apply with no penalties. (See suggested amendments on page 125.)

NO ADVERSE EFFECT FOR PURPOSES OF THE IMMIGRATION LAWS (SEC. 313)

- We recommend several minor technical changes. (See suggested changes on page 125-128.)

Taxation of Cannabis

Imposition of Tax (Sec. 5901)

- We support the scaling of the tax over the first years of implementation and the reduced rate of tax (or tax credit equivalent) of 0.5 of the top rate for the sales above \$12.5 million and below \$25 million, a rate of 0.25 of the top rate for sales above \$2.5 million and below \$12.5 million and sales, and a rate of 0.1 of the top rate for sales under \$2.5 million. We support this 1/0.5/0.25/0.1 formula to be applied during the scaling up years. While we appreciate how the bill avoids a one-size-fits-all tax bracket, the two brackets in the bill do not provide sufficient gradation in rates. For example, a small-scale craft cannabis business with revenue around \$1 million should not be taxed at the same effective rate as a mid-size marijuana business with \$12 million in revenue.
- We also encourage the use of taxes to support state social equity programs, small businesses, innovative approaches that reduce commercialization, and alternative ownership models, including for example:
 - A tax on advertising and marketing expenditures
 - A tax on interstate commerce
 - A corporate tax on profits
 - A reduced tax for state-run establishments and other alternative ownership models, such as worker cooperatives
 - Consider that the TTB imposes a flat ad valorem tax only on other products it regulates

Exceptions from the Tax (Sec. 5902)

- We support the exception for the definition of “producer” to create a “personal use exception” to the taxation and registration requirements. The non-commercial production of cannabis should be protected. However, we recommend deferring to state law guidelines for what constitutes non-commercial home cultivation in states that have chosen to protect this activity. The personal use exception should apply to the parameters and allowable amounts set under state law in states where those limits exceed the amount set by the Secretary. (See suggested amendments on page 140-141.)
- We recommend additional exceptions to the federal tax requirements for state medical cannabis programs, especially those providing cannabis at reduced cost to low income patients. Nonprofit groups, collectives, and cooperatives that are providing medical cannabis consistent with state regulatory programs should be exempted from the tax in order to protect the important role these entities play in providing medical cannabis to low income people. (Sec. 5904).

Exemptions from the Bond Requirement (Sec. 5911)

- There also must be exceptions to the bond requirements for personal production and state medical cannabis programs, especially those providing cannabis at reduced cost to low income patients. Nonprofit groups, collectives, and cooperatives that are providing medical cannabis consistent with state regulatory programs should be exempted from

the bond requirements in order to protect the important role these entities play in providing medical cannabis to low income people. (Sec. 5904).

Civil Penalties (Sec. 5931) and Criminal Penalties (Sec. 5932)

- We oppose the creation of a new criminal offense and recommend the deletion of Sec. 5932, especially as the offense could be used as a mechanism to add enforcement and criminal penalties to low level activity that remains prohibited by the states and remains subject to enforcement by the states.
- We recommend that all tax penalties be exclusively civil offenses that are only administrative sanctions and civil fines, but not incarceration.

Public Health, Cannabis Administration, and Trade Practices

Cannabis Products Advisory Committee (Sec. 1111)

- We recommend that the membership of the cannabis products advisory committee be racially, culturally, and regionally diverse, and include representation from those with expertise in medical cannabis as used under existing state medical cannabis laws.

General Provisions for Control of Cannabis Products (Sec. 1105)

- We recommend that the restrictions on distribution for persons under 21 years of age include an exception for minors who are qualified medical cannabis patients under their resident state law. There will be many desperate families and children cut off from the medicine they are currently using to manage a range of serious medical conditions if an exception to the age restriction is not included. While every state adult-use marijuana program already prohibits people under 21 from purchasing cannabis, nearly every state medical cannabis program currently allows individuals ages 18-20 with a physician's recommendation to be able to make purchases in medical dispensaries. Every state medical cannabis program that allows pediatric access requires that patients under the age of 18 have their medicine purchased and administered by their parent or legal guardian. Comprehensive federal marijuana reform should maintain this balance of access.

Amendments to the Federal Food, Drug, and Cosmetic Act (Sec. 502)

- These amendments prohibit the sale of cannabis to anyone under the age of 21. (Sec. 502(b)). We recommend providing an exception to this age restriction for medical cannabis patients under the age of 21 who are using cannabis in accordance with state law. (See comment above on General Provisions for Control of Cannabis Products (Sec. 1105) and suggested amendments on page 193, 204.)
- We recommend following the existing sales limits that are contained in existing state law and state regulation. (See suggested amendments on page 204.)

Federal Cannabis Administration

Procedure for Issuance of Cannabis Permits (Sec. 302)

- We recommend defining cannabis microbusinesses. (See suggested amendments on page 225.)
- We recommend prohibiting cannabis companies from being owned or controlled by online technology platforms and limiting the aggregate revenue of acquired businesses. These changes are necessary to protect small businesses and allow for competition in the marketplace. (See suggested amendments on page 221.)
- A violation of Federal or State criminal law related to cannabis is a disqualification to federal permitting if the violation occurred after the date of the CAO A enactment and within the past 3 years of application. (Sec. 302(a)(2)). We recommend that this disqualification be limited to more serious cannabis offenses (such as RICO violations and crimes of public deception) and particularly that it exclude certain cannabis offenses such as sales and intent to distribute in states where cannabis remains illegal under state law. One of the most effective mechanisms for reducing the illicit cannabis market is to bring as many people as possible under the umbrella of legal regulation. Denying a permit is an invitation for an individual to keep operating illegally. Granting a permit is an invitation to join the legal, regulated system to the benefit of everyone. We also recommend adding convictions related to public corruption and harm to public health as disqualifying offenses. (See suggested amendments on pages 221-222.)
- We recommend including a limit of five permits that one entity can hold as well as limiting the total amount of cannabis that one entity can produce across all of its permits in order to prevent monopolization of the market. (See suggested amendments on page 223.)
- We recommend adding a provision authorizing cannabis microbusinesses to ship cannabis products directly to consumers. (See suggested amendments on page 225.)
- We recommend limiting the size of allowable mergers and acquisitions in order to limit monopolization of the market. (See suggested amendments on page 225-226.)

Banking, Housing, and Community Development

Consumer protection for individuals with criminal records (Sec. 707)

- We appreciate the inclusion of funding for Minority Depository Institutions and Community Development Financial Institutions to help protect and provide lending capital to small businesses in the banking section of CAO A; however, we recommend protecting access to banking services for anyone with a prior cannabis offense rather than just those with “nonviolent” cannabis offenses. “Nonviolent cannabis offense” is not defined in the bill or elsewhere in the law. This limitation is unnecessary in this context and creates a lack of clarity that will lead to confusion. (See suggested amendments on page 289.)

Miscellaneous

Cannabis products advisory committee (Sec. 802)

- We recommend increasing the number of members on the committee who are state regulators, who are medical cannabis patients, and who have expertise in equity and

social justice so that these interests are adequately represented on the committee. (See suggested amendments on page 292.)

- We recommend that the members with experience in public safety not be a current law enforcement officer or current prosecutor as they may be unable to act independently from their agency's position. (See suggested amendments on page 293.)

Grants for hiring and training relating to cannabis enforcement (Sec. 804)

- We oppose and recommend removing the grants to small law enforcement agencies. Local governments should be incentivized to allow for legal cannabis under local law. One of the biggest barriers to successful implementation of state legalization laws are local bans. Additionally, these grants risk fueling the war on drugs by funding enforcement of potentially low level cannabis offenses. (See suggested amendments on page 305.)

Although it is unclear where it best fits, we suggest including protective language in the bill that will allow the on-premises use of cannabis by qualified residents and patients in medical and residential facilities, including Veterans Affairs hospitals and facilities, nursing facilities, hospitals, hospices, assisted living facilities, and adult foster care facilities, without threatened or real loss of collection from the Center for Medicare and Medicaid services, federal research funding, or federal licensure.

Additionally, we recommend that all of the data collection and reports required throughout the bill be made available to the public and to outside researchers.

Finally, while not directly addressed in this bill, the Marijuana Justice Coalition stands behind ensuring fair labor practices and environmental responsibility in the emerging cannabis industry. More than 30,000 individuals are already a part of this multi-billion dollar industry and that number is sure to grow when cannabis is legal at the federal level. The CAO must ensure that all cannabis jobs throughout the industry classify their workers as employees with the full rights and protections, including the right to join a union as well as wage and hour protection. It must make cannabis industry apprenticeships eligible for federal funding, giving the industry a skilled and well-trained workforce with the opportunity for advancement. These apprenticeship programs must also support the inclusion of individuals most impacted by cannabis prohibition. The Environmental Protection Agency should have authority to apply and enforce existing rules and regulations when it comes to environmental practices of the cannabis industry. Federal incentives for registrants who adopt beneficial environmental approaches, such as solar energy, should be created.

We look forward to building support for this monumental legislation in the Senate this year. We hope we can work together to introduce a stronger CAO in the next Congress as well as identify lead cosponsors in the House to introduce a companion bill in the next Congress. **However, the endorsement of the bill as introduced in this Congress should not be construed as endorsement for identical language in future sessions of Congress, and that inclusion of the suggestions in this letter will be key for future endorsement from the**

MJC. We look forward to working with your offices to develop a just and equitable path forward. For questions about anything contained in this letter, please contact Maritza Perez, Director of the Office of Federal Affairs for the Drug Policy Alliance, at mperez@drugpolicy.org.

Sincerely,

Center for American Progress
Center for Law and Social Policy (CLASP)
Clergy for a New Drug Policy
Doctors for Cannabis Regulation
Drug Policy Alliance
Human Rights Watch
Immigrant Defense Project
JustLeadershipUSA
Minorities for Medical Marijuana, Inc.
MoveOn
National Immigration Project (NIPNLG)
National Organization for the Reform of Marijuana Laws
Students for Sensible Drug Policy
The BOWL PAC
The National Urban League
Veterans Cannabis Coalition
United Food and Commercial Workers International Union