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Legalizing Marijuana: Why Citizens Should Just Say No

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Abstract: *This November, California voters will consider a ballot initiative, the Regulate, Control and Tax Cannabis Act of 2010. Scientific research is clear that marijuana is addictive and that its use significantly impairs bodily and mental functions. Even where decriminalized, marijuana trafficking remains a source of violence, crime, and social disintegration. Furthermore, studies have shown that legalized marijuana will provide nowhere near the economic windfall proclaimed by some proponents. The RCTCA addresses neither the practical problems of implementation nor the fact that federal law prohibits marijuana production, distribution, and possession. There is strong evidence to suggest that legalizing marijuana would serve little purpose other than to worsen the state's drug problems—addiction, violence, disorder, and death. While long on rhetoric, the legalization movement, by contrast, is short on facts.*

The scientific literature is clear that marijuana is addictive and that its use significantly impairs bodily and mental functions. Marijuana use is associated with memory loss, cancer, immune system deficiencies, heart disease, and birth defects, among other conditions. Even where decriminalized, marijuana trafficking remains a source of violence, crime, and social disintegration.¹

Nonetheless, this November, California voters will consider a ballot initiative, the Regulate, Control and Tax Cannabis Act of 2010 (RCTCA),² that would legalize most marijuana distribution and use under

Talking Points

- Legalization of marijuana is bad public policy because the drug is addictive and significantly impairs bodily and mental functions; its use is associated with memory loss, cancer, and birth defects, among other conditions.
- The RCTCA addresses neither the practical problems of implementation nor the fact that federal law prohibits marijuana production, distribution, and possession.
- Marijuana is not at all like alcohol. Consumption of alcohol carries few health risks and even offers some significant benefits. Consumption of marijuana impairs the immune system and short-term memory, elevates the risk of heart attack, and causes respiratory and brain damage.
- Policies aimed at legalizing marijuana will result in a myriad of unintended but predictable consequences, including increased usage by minors, additional drug trafficking by criminal syndicates, and an increase in crime.
- Despite claims to the contrary, the social costs of legalizing marijuana will dwarf the meager taxes raised.

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state law. (These activities would remain federal crimes.) This vote is the culmination of an organized campaign by pro-marijuana activists stretching back decades.

The current campaign, like previous efforts, downplays the well-documented harms of marijuana trafficking and use while promising benefits ranging from reduced crime to additional tax revenue. In particular, supporters of the initiative make five bold claims:

1. "Marijuana is safe and non-addictive."
2. "Marijuana prohibition makes no more sense than alcohol prohibition did in the early 1900s."
3. "The government's efforts to combat illegal drugs have been a total failure."
4. "The money spent on government efforts to combat the illegal drug trade can be better spent on substance abuse and treatment for the allegedly few marijuana users who abuse the drug."
5. "Tax revenue collected from marijuana sales would substantially outweigh the social costs of legalization."³

As this paper details, all five claims are demonstrably false or, based on the best evidence, highly dubious.

Further, supporters of the initiative simply ignore the mechanics of decriminalization—that is, how it would directly affect law enforcement, crime, and communities. Among the important questions left unanswered are:

- How would the state law fit into a federal regime that prohibits marijuana production, distribution, and possession?
- Would decriminalization, especially if combined with taxation, expand market opportunities for the gangs and cartels that currently dominate drug distribution?
- Would existing zoning laws prohibit marijuana cultivation in residential neighborhoods, and if not, what measures would growers have to undertake to keep children from the plants?
- Would transportation providers be prohibited from firing bus drivers because they smoke marijuana?

No one knows the specifics of how marijuana decriminalization would work in practice or what measures would be necessary to prevent children, teenagers, criminals, and addicts from obtaining the drug.

The federal government shares these concerns. Gil Kerlikowske, Director of the White House Office of National Drug Control Policy (ONDCP), recently stated, "Marijuana legalization, for any purpose, is a non-starter in the Obama Administration."⁴ The Administration—widely viewed as more liberal than any other in recent memory and, for a time, as embodying the hopes of pro-legalization activists⁵—has weighed the costs and benefits and concluded that marijuana legalization would compromise public health and safety.

1. STUART M. BUTLER, THE MARIJUANA EPIDEMIC, HERITAGE FOUNDATION BACKGROUNDER NO. 140 (May 4, 1981), *available at* <http://www.heritage.org/Research/Reports/1981/05/The-Marijuana-Epidemic>.
2. Letter from Attorney James Wheaton, to Neil Amos, Initiative Coordinator, Office of the Attorney General (July 27, 2009), *available at* http://ag.ca.gov/cms_attachments/initiatives/pdfs/i821_initiative_09-0024_amdt_1-s.pdf.
3. For a preview of all potential arguments that the pro-legalization movement will make, one need go no further than the Web site of the Drug Policy Alliance. The Drug Policy Alliance: Alternatives to Marijuana Prohibition and the Drug War, <http://www.drugpolicy.org> (last visited August 31, 2010). The Web site contains a section titled "Myths and Facts About Marijuana." The Drug Policy Alliance: Myths and Facts About Marijuana, <http://www.drugpolicy.org/marijuana/factsmyths/> (last visited August 31, 2010). According to their Web site, the Drug Policy Alliance Network is the "nation's leading organization promoting policy alternatives to the drug war that are grounded in science, compassion, health and human rights." George Soros is on the Board of the Drug Policy Alliance. The Drug Policy Alliance: Board of Directors, Drug Policy Alliance, <http://www.drugpolicy.org/about/keystaff/boardofdirec/> (last visited August 31, 2010).
4. R. Gil Kerlikowske, ONDCP Director, Remarks to the California Police Chiefs Conference: Why Marijuana Legalization Would Compromise Public Health and Public Safety (March 4, 2010), *available at* http://www.ondcp.gov/news/speech10/030410_Chief.pdf.

California's voters, if they take a fair-minded look at the evidence and the practical problems of legalization, should reach the same conclusion: Marijuana is a dangerous substance that should remain illegal under state law.

The Initiative

The RCTCA's purpose, as defined by advocates of legalization, is to regulate marijuana just as the government regulates alcohol. The law would allow anyone 21 years of age or older to possess, process, share, or transport up to one full ounce of marijuana "for personal consumption." Individuals could possess an unlimited number of living and harvested marijuana plants on the premises where they were grown. Individual landowners or lawful occupants of private property could cultivate marijuana plants "for personal consumption" in an area of not more than 25 square feet per private residence or parcel.

The RCTCA would legalize drug-related paraphernalia and tools and would license establishments for on-site smoking and other consumption of marijuana. Supporters have included some alcohol-like restrictions against, for example, smoking marijuana while operating a vehicle.⁶ Finally, the act authorizes the imposition and collection of taxes and fees associated with legalization of marijuana.

Unsafe in Any Amount: How Marijuana Is Not Like Alcohol

Marijuana advocates have had some success peddling the notion that marijuana is a "soft" drug, similar to alcohol, and fundamentally different from

"hard" drugs like cocaine or heroin. It is true that marijuana is not the most dangerous of the commonly abused drugs, but that is not to say that it is safe. Indeed, marijuana shares more in common with the "hard" drugs than it does with alcohol.

A common argument for legalization is that smoking marijuana is no more dangerous than drinking alcohol and that prohibiting the use of marijuana is therefore no more justified than the prohibition of alcohol. As Jacob Sullum, author of *Saying Yes: In Defense of Drug Use*, writes:

Americans understood the problems associated with alcohol abuse, but they also understood the problems associated with Prohibition, which included violence, organized crime, official corruption, the erosion of civil liberties, disrespect for the law, and injuries and deaths caused by tainted black-market booze. They decided that these unintended side effects far outweighed whatever harms Prohibition prevented by discouraging drinking. The same sort of analysis today would show that the harm caused by drug prohibition far outweighs the harm it prevents, even without taking into account the value to each individual of being sovereign over his own body and mind.⁷

At first blush, this argument is appealing, especially to those wary of over-regulation by government. But it overlooks the enormous difference between alcohol and marijuana.

Legalization advocates claim that marijuana and alcohol are mild intoxicants and so should be reg-

5. On October 19, 2009, the Justice Department issued a memorandum to selected United States Attorneys regarding investigations and prosecutions in states authorizing the medical use of marijuana. See Memorandum from David W. Ogden, Deputy Attorney General, to Selected United States Attorneys (October 19, 2009), available at <http://blogs.usdoj.gov/blog/archives/192>.
6. The act prohibits unlicensed possession for sale; consumption in public, including consumption by an operator of any vehicle, boat, or aircraft; and smoking in any space while minors are present. The act provides for state regulations, local ordinances, and other official acts to control, license, regulate, permit, or otherwise authorize cultivation, retail sale, consumption, and transportation of marijuana. To read the entire act, see CALIFORNIA SECRETARY OF STATE, CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 2, 2010: VOTER INFORMATION GUIDE 92 (August 10, 2010), available at <http://www.voterguide.sos.ca.gov/pdf/english/text-proposed-laws.pdf>.
7. Jacob Sullum, *Prohibition Didn't Work Then; It Isn't Working Now*, L.A. TIMES, April 21, 2008, available at <http://www.latimes.com/news/opinion/la-op-sullum-stimson21apr21,0,7060990.story>.

ulated similarly; but as the experience of nearly every culture, over the thousands of years of human history, demonstrates, alcohol is different. Nearly every culture has its own alcoholic preparations, and nearly all have successfully regulated alcohol consumption through cultural norms. The same cannot be said of marijuana. There are several possible explanations for alcohol's unique status: For most people, it is not addictive; it is rarely consumed to the point of intoxication; low-level consumption is consistent with most manual and intellectual tasks; it has several positive health benefits; and it is formed by the fermentation of many common substances and easily metabolized by the body.

To be sure, there are costs associated with alcohol abuse, such as drunk driving and disease associated with excessive consumption. A few cultures—and this nation for a short while during Prohibition—have concluded that the benefits of alcohol consumption are not worth the costs. But they are the exception; most cultures have concluded that it is acceptable in moderation. No other intoxicant shares that status.

Alcohol differs from marijuana in several crucial respects. First, marijuana is far more likely to cause addiction. Second, it is usually consumed to the point of intoxication. Third, it has no known general healthful properties, though it may have some palliative effects. Fourth, it is toxic and deleterious to health. Thus, while it is true that both alcohol and marijuana are less intoxicating than other mood-altering drugs, that is not to say that marijuana is especially similar to alcohol or that its use is healthy or even safe.

In fact, compared to alcohol, marijuana is not safe. Long-term, moderate consumption of alcohol

carries few health risks and even offers some significant benefits. For example, a glass of wine (or other alcoholic drink) with dinner actually improves health.⁸ Dozens of peer-reviewed medical studies suggest that drinking moderate amounts of alcohol reduces the risk of heart disease, strokes, gallstones, diabetes, and death from a heart attack.⁹ According to the Mayo Clinic, among many others, moderate use of alcohol (defined as two drinks a day) “seems to offer some health benefits, particularly for the heart.”¹⁰ Countless articles in medical journals and other scientific literature confirm the positive health effects of moderate alcohol consumption.

The effects of regular marijuana consumption are quite different. For example, the National Institute on Drug Abuse (a division of the National Institutes of Health) has released studies showing that use of marijuana has wide-ranging negative health effects. Long-term marijuana consumption “impairs the ability of T-cells in the lungs’ immune system to fight off some infections.”¹¹ These studies have also found that marijuana consumption impairs short-term memory, making it difficult to learn and retain information or perform complex tasks; slows reaction time and impairs motor coordination; increases heart rate by 20 percent to 100 percent, thus elevating the risk of heart attack; and alters moods, resulting in artificial euphoria, calmness, or (in high doses) anxiety or paranoia.¹² And it gets worse: Marijuana has toxic properties that can result in birth defects, pain, respiratory system damage, brain damage, and stroke.¹³

Further, prolonged use of marijuana may cause cognitive degradation and is “associated with lower test scores and lower educational attainment because during periods of intoxication the drug affects the ability to learn and process infor-

8. K. J. Mukamal et al., *Roles of Drinking Pattern and Type of Alcohol Consumed in Coronary Heart Disease in Men*, 348 NEW ENG. J. MED. 109–18 (2003).

9. Alcohol Use: If You Drink, Keep It Moderate, <http://www.mayoclinic.com/health/alcohol/SC00024> (last visited August 27, 2010).

10. *Id.*

11. National Institute on Drug Abuse, *Marijuana: Facts Every Parents Needs to Know*, <http://www.drugabuse.gov/MarijBroch/parentpg13-14N.html> (last visited August 27, 2010).

12. National Institute on Drug Abuse, *Marijuana*, <http://www.drugabuse.gov/tib/marijuana.html> (last visited August 27, 2010).

13. *Id.*

mation, thus influencing attention, concentration, and short-term memory.”¹⁴ Unlike alcohol, marijuana has been shown to have a residual effect on cognitive ability that persists beyond the period of intoxication.¹⁵ According to the National Institute on Drug Abuse, whereas alcohol is broken down relatively quickly in the human body, THC (tetrahydrocannabinol, the main active chemical in marijuana) is stored in organs and fatty tissues, allowing it to remain in a user’s body for days or even weeks after consumption.¹⁶ Research has shown that marijuana consumption may also cause “psychotic symptoms.”¹⁷

Marijuana’s effects on the body are profound. According to the British Lung Foundation, “smoking three or four marijuana joints is as bad for your lungs as smoking twenty tobacco cigarettes.”¹⁸ Researchers in Canada found that marijuana smoke contains significantly higher levels of numerous toxic compounds, like ammonia and hydrogen cyanide, than regular tobacco smoke.¹⁹ In fact, the study determined that ammonia was found in marijuana smoke at levels of up to 20 times the levels found in tobacco.²⁰ Similarly, hydrogen cyanide was found in marijuana smoke at concentrations three to five times greater than those found in tobacco smoke.²¹

Marijuana, like tobacco, is addictive. One study found that more than 30 percent of adults who

used marijuana in the course of a year were dependent on the drug.²² These individuals often show signs of withdrawal and compulsive behavior.²³ Marijuana dependence is also responsible for a large proportion of calls to drug abuse help lines and treatment centers.

To equate marijuana use with alcohol consumption is, at best, uninformed and, at worst, actively misleading. Only in the most superficial ways are the two substances alike, and they differ in every way that counts: addictiveness, toxicity, health effects, and risk of intoxication.

Unintended Consequences

Today, marijuana trafficking is linked to a variety of crimes, from assault and murder to money laundering and smuggling. Legalization of marijuana would increase demand for the drug and almost certainly exacerbate drug-related crime, as well as cause a myriad of unintended but predictable consequences.

To begin with, an astonishingly high percentage of criminals are marijuana users. According to a study by the RAND Corporation, approximately 60 percent of arrestees test positive for marijuana use in the United States, England, and Australia. Further, marijuana metabolites are found in arrestees’ urine more frequently than those of any other drug.²⁴

14. See M. T. Lynskey & W. D. Hall, *The Effects of Adolescent Cannabis Use on Educational Attainment: A Review*, ADDICTION, 95(11) 1621–1630 (2000).

15. Harrison G. Pope and Deborah Yurgelun-Todd, *The Residual Cognitive Effects of Heavy Marijuana Use in College Students*, 275 JAMA 521–27 (1996).

16. *Marijuana: Facts for Teens*, Mar. 2008, at 7, available at http://www.drugabuse.gov/PDF/TEENS_Marijuana_brochure.pdf.

17. ROBIN ROOM ET AL., CANNABIS POLICY: MOVING BEYOND STALEMATE (2009).

18. OFFICE OF NATIONAL DRUG CONTROL POLICY, WHAT AMERICANS NEED TO KNOW ABOUT MARIJUANA 3, available at http://www.ncjrs.gov/ondcppubs/publications/pdf/mj_rev.pdf.

19. David Moir et al., A Comparison of Mainstream and Sidestream Marijuana and Tobacco Cigarette Smoke Produced Under Two Machine Smoking Conditions, CHEM. RES. TOXICOL. 21 (2) 494–502 (2008) available at <http://pubs.acs.org/doi/pdfplus/10.1021/tx700275p>.

20. *Id.*

21. *Id.*

22. W. M. Compton et al., *Prevalence of Marijuana Use Disorders in the United States: 1991–1992 and 2001–2002*, 291 JAMA 2114–2121 (2004).

23. A. J. Budney & J. R. Hughes, *The Cannabis Withdrawal Syndrome*, 19 CURRENT OPINION IN PSYCHIATRY, 233–238 (2004); A. J. Budney et al., *Review of the Validity and Significance of Cannabis Withdrawal Syndrome*, 161 AMERICAN JOURNAL OF PSYCHIATRY, 1967–1977 (2004). See also R. Gil Kerlikowske, *supra* note 4.

Although some studies have shown marijuana to inhibit aggressive behavior and violence, the National Research Council concluded that the “long-term use of marijuana may alter the nervous system in ways that do promote violence.”²⁵ No place serves as a better example than Amsterdam.

Marijuana advocates often point to the Netherlands as a well-functioning society with a relaxed attitude toward drugs, but they rarely mention that Amsterdam is one of Europe’s most violent cities. In Amsterdam, officials are in the process of closing marijuana dispensaries, or “coffee shops,” because of the crime associated with their operation.²⁶ Furthermore, the Dutch Ministry of Health, Welfare and Sport has expressed “concern about drug and alcohol use among young people and the social consequences, which range from poor school performance and truancy to serious impairment, including brain damage.”²⁷

Amsterdam’s experience is already being duplicated in California under the current medical marijuana statute. In Los Angeles, police report that areas surrounding cannabis clubs have experienced a 200 percent increase in robberies, a 52.2 percent increase in burglaries, a 57.1 percent increase in aggravated assault, and a 130.8 percent increase in burglaries from automobiles. Current law requires a doctor’s prescription to procure marijuana; full legalization would likely spark an even more acute increase in crime.

Legalization of marijuana would also inflict a series of negative consequences on neighborhoods and communities. The nuisance caused by the

powerful odor of mature marijuana plants is already striking California municipalities. The City Council of Chico, California, has released a report detailing the situation and describing how citizens living near marijuana cultivators are disturbed by the incredible stink emanating from the plants.²⁸

Perhaps worse than the smell, crime near growers is increasing, associated with “the theft of marijuana from yards where it is being grown.”²⁹ As a result, housing prices near growers are sinking.

Theoretical arguments in favor of marijuana legalization usually overlook the practical matter of how the drug would be regulated and sold. It is the details of implementation, of course, that will determine the effect of legalization on families, schools, and communities. Most basically, how and where would marijuana be sold?

- Would neighborhoods become neon red-light districts like Amsterdam’s, accompanied by the same crime and social disorder?
- If so, who decides what neighborhoods will be so afflicted—residents and landowners or far-off government officials?
- Or would marijuana sales be so widespread that users could add it to their grocery lists?
- If so, how would stores sell it, how would they store it, and how would they prevent it from being diverted into the gray market?
- Would stores dealing in marijuana have to fortify their facilities to reduce the risk of theft and assault?³⁰

24. Rosalie Liccardo Pacula and Beau Kilmer, *Marijuana and Crime: Is There a Connection Beyond Prohibition?* (RAND Corporation Health Working Paper WR-125, Prepared for the National Institute on Drug Abuse, January 2004) available at http://www.rand.org/pubs/working_papers/2004/RAND_WR125.pdf.

25. David Moir et al., *supra* note 19.

26. Ministry of Health, Welfare and Sport, Government to Scale Down Coffee Shops (Sept. 11, 2009), <http://english.minvws.nl/en/nieuwsberichten/vgp/2009/government-to-scale-down-coffee-shops.asp>.

27. *Id.*

28. Memorandum from Lori J. Barker, City Attorney, to Chico City Council (Oct. 6, 2009), available at http://www.chico.ca.us/government/minutes_agendas/documents/SKMBT_60010011114120.pdf.

29. *Id.*

30. California police provide evidence that attempts to burglarize dispensaries are already a problem. See Summit on the Impact of California’s Medical Marijuana Laws: Dispensary Related Crime (April 23, 2009), available at http://www.californiapolicechiefs.org/nav_files/marijuana_files/files/DispensarySummitPresentation.ppt.

The most likely result is that the drug will not be sold in legitimate stores at all, because while the federal government is currently tolerating medical marijuana dispensaries, it will not tolerate wide-scale sales under general legalizational statutes. So marijuana will continue to be sold on the gray or black market.

The act does not answer these or other practical questions regarding implementation. Rather, it leaves those issues to localities. No doubt, those entities will pass a variety of laws in an attempt to deal with the many problems caused by legalization, unless the local laws are struck down by California courts as inconsistent with the underlying initiative, which would be even worse. At best, that patchwork of laws, differing from one locality to another, will be yet another unintended and predictable problem arising from legalization as envisioned under this act.

Citizens also should not overlook what may be the greatest harms of marijuana legalization: increased addiction to and use of harder drugs. In addition to marijuana's harmful effects on the body and relationship to criminal conduct, it is a gateway drug that can lead users to more dangerous drugs. Prosecutors, judges, police officers, detectives, parole or probation officers, and even defense attorneys know that the vast majority of defendants arrested for violent crimes test positive for illegal drugs, including marijuana. They also know that marijuana is the starter drug of choice for most criminals. Whereas millions of Americans consume moderate amounts of alcohol without ever "moving on" to dangerous drugs, marijuana use and cocaine use are strongly correlated.

While correlation does not necessarily reflect causation, and while the science is admittedly mixed as to whether it is the drug itself or the people the new user associates with who cause the move on to cocaine, heroin, LSD, or other drugs, the RAND Corporation reports that marijuana

prices and cocaine use are directly linked, suggesting a substitution effect between the two drugs.³¹ Moreover, according to RAND, legalization will cause marijuana prices to fall as much as 80 percent.³² That can lead to significant consequences because "a 10-percent decrease in the price of marijuana would increase the prevalence of cocaine use by 4.4 to 4.9 percent."³³ As cheap marijuana floods the market both in and outside of California, use of many different types of drugs will increase, as will marijuana use.

It is impossible to predict the precise consequences of legalization, but the experiences of places that have eased restrictions on marijuana are not positive. Already, California is suffering crime, dislocation, and increased drug use under its current regulatory scheme. Further liberalizing the law will only make matters worse.

Flouting Federal Law

Another area of great uncertainty is how a state law legalizing marijuana would fit in with federal law to the contrary. Congress has enacted a comprehensive regulatory scheme for restricting access to illicit drugs and other controlled substances. The Controlled Substances Act of 1970 prohibits the manufacture, distribution, and possession of all substances deemed to be Schedule I drugs—drugs like heroin, PCP, and cocaine. Because marijuana has no "currently accepted medical use in treatment in the United States," it is a Schedule I drug that cannot be bought, sold, possessed, or used without violating federal law.

Under the Supremacy Clause of the Constitution of the United States, the Controlled Substances Act is the supreme law of the land and cannot be superseded by state laws that purport to contradict or abrogate its terms. The RCTCA proposes to "reform California's cannabis laws in a way that will benefit our state" and "[r]egulate cannabis like we do alcohol."³⁴ But the act does not even purport to

31. BEAU KILMER ET AL., ALTERED STATE? ASSESSING HOW MARIJUANA LEGALIZATION IN CALIFORNIA COULD INFLUENCE MARIJUANA CONSUMPTION AND PUBLIC BUDGETS (2010), available at http://www.rand.org/pubs/occasional_papers/2010/RAND_OP315.pdf.

32. *Id.*

33. *Id.* at 43.

address the fundamental constitutional infirmity that it would be in direct conflict with federal law. If enacted and unchallenged by the federal government, it would call into question the government's ability to regulate all controlled substances, including drugs such as Oxycontin, methamphetamine, heroin, and powder and crack cocaine. More likely, however, the feds would challenge the law in court, and the courts would have no choice but to strike it down.

Congress has the power to change the Controlled Substances Act and remove marijuana from Schedule I. Yet after decades of lobbying, it has not, largely because of the paucity of scientific evidence in support of a delisting.

California, in fact, is already in direct violation of federal law. Today, its laws allow the use of marijuana as a treatment for a range of vaguely defined conditions, including chronic pain, nausea, and lack of appetite, depression, anxiety, and glaucoma. "Marijuana doctors" are listed in the classified advertising sections of newspapers, and many are conveniently located adjacent to "dispensaries." At least one "doctor" writes prescriptions from a tiny hut beside the Venice Beach Boardwalk.

This "medical marijuana" law and similar ones in other states are premised on circumvention of the Food and Drug Administration (FDA) approval process. "FDA's drug approval process requires well-controlled clinical trials that provide the necessary scientific data upon which FDA makes its approval and labeling decisions."³⁵ Marijuana, even that supposedly used for medicinal purposes, has been rejected by the FDA because, among other reasons, it "has no currently accepted or proven medical use."³⁶

The lack of FDA approval means that marijuana may come from unknown sources, may be adulterated with foreign substances, or may not even be marijuana at all. Pot buyers have no way to know what they are getting, and there is no regulatory authority with the ability to go after bogus manufacturers and dealers. Even if one overlooks its inherently harmful properties, marijuana that is commonly sold is likely to be far less safe than that studied in the lab or elsewhere.

Marijuana advocates claim that federal enforcement of drug laws, particularly in jurisdictions that allow the use of medical marijuana, violates states' rights. The Supreme Court, however, has held otherwise. In 2002, California resident Angel Raich produced and consumed marijuana, purportedly for medical purposes. Her actions, while in accordance with California's "medical marijuana" law,³⁷ clearly violated the Controlled Substances Act, and the local sheriff's department destroyed Raich's plants. Raich claimed that she needed to use marijuana, prescribed by her doctor, for medical purposes. She sued the federal government, asking the court to stop the government from interfering with her right to produce and use marijuana.

In 2006, the Supreme Court held in *Gonzales vs. Raich*³⁸ that the Commerce Clause confers on Congress the authority to ban the use of marijuana, even when a state approves it for "medical purposes" and it is produced in small quantities for personal consumption. Many legal scholars criticize the Court's extremely broad reading of the Commerce Clause as inconsistent with its original meaning, but the Court's decision nonetheless stands.

If the RCTCA were enacted, it would conflict with the provisions of the Controlled Substances

34. See CALIFORNIA SECRETARY OF STATE, *supra* note 6.

35. Press Release, U.S. Food and Drug Administration, Inter-Agency Advisory Regarding Claims That Smoked Marijuana Is a Medicine (Apr. 20, 2006), available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108643.htm>.

36. Gardiner Harris, *F.D.A. Dismisses Medical Benefit from Marijuana*, N.Y. TIMES, April 21, 2006, available at <http://www.nytimes.com/2006/04/21/health/21marijuana.html>.

37. In 1996, California passed the Compassionate Use Act, which legalized marijuana for medical use. The law conflicted with the Controlled Substances Act, which classifies marijuana as a Schedule I controlled dangerous substance and makes no exception for medical necessity.

38. 545 U.S. 1 (2005).

Act and invite extensive litigation that would almost certainly result in its being struck down. Until that happened, state law enforcement officers would be forced into a position of uncertainty regarding their conflicting obligations under federal and state law and cooperation with federal authorities.

Bogus Economics

An innovation of the campaign in support of RCTCA is its touting of the potential benefit of legalization to the government, in terms of additional revenues from taxing marijuana and savings from backing down in the “war on drugs.” The National Organization for the Reform of Marijuana Laws (NORML), for example, claims that legalization “could yield California taxpayers over \$1.2 billion per year” in tax benefits.³⁹ According to a California NORML Report updated in October 2009, an excise tax of \$50 per ounce would raise about \$770 million to \$900 million per year and save over \$200 million in law enforcement costs per year.⁴⁰ It is worth noting that \$900 million equates to 18 million ounces—enough marijuana for Californians to smoke one billion marijuana cigarettes each year.

But these projections are highly speculative and riddled with unfounded assumptions. Dr. Rosalie Liccardo Pacula, an expert with the RAND Corporation who has studied the economics of drug policy for over 15 years, has explained that the California “Board of Equalization’s estimate of \$1.4 billion [in] potential revenue for the state is based on a series of assumptions that are in some instances subject to tremendous uncertainty and in other cases not validated.”⁴¹ She urged the California Committee on Public Safety to conduct an honest and thorough cost-benefit analysis of the potential revenues and costs associated with legal-

izing marijuana. To date, no such realistic cost-benefit analysis has been done.

In her testimony before the committee, Dr. Pacula stated that prohibition raises the cost of production by at least 400 percent and that legalizing marijuana would cause the price of marijuana to fall considerably—much more than the 50 percent price reduction incorporated into the state’s revenue model. Furthermore, she noted that a \$50-per-ounce marijuana tax was not realistic, because it would represent a 100 percent tax on the cost of the product.

Under the state scheme, she testified, there would be “tremendous profit motive for the existing black market providers to stay in the market.”⁴² The only way California could effectively eliminate the black market for marijuana, according to Dr. Pacula, “is to take away the substantial profits in the market and allow the price of marijuana to fall to an amount close to the cost of production. Doing so, however, will mean substantially smaller tax revenue than currently anticipated from this change in policy.”

The RCTCA, in fact, allows for so much individual production of marijuana that even the Board of Equalization’s \$1.4 billion per year revenue estimate seems unlikely. Under the law, any resident could grow marijuana for “personal use” in a plot at home up to 25 square feet in size. One ounce of marijuana is enough for 60 to 120 marijuana cigarettes. One plant produces one to five pounds, or 16 to 80 ounces, of marijuana each year, and 25 square feet of land can sustain about 25 plants. Therefore, an individual will be able to produce 24,000 to 240,000 joints legally each year.

Not only is this more than any individual could possibly consume; it is also enough to encourage individuals to grow and sell pot under the individ-

39. DALE GIERINGER, PH.D., BENEFITS OF MARIJUANA LEGALIZATION IN CALIFORNIA, http://www.canorml.org/background/CA_legalization2.html (last visited Aug. 30, 2010).

40. *Id.*

41. Rosalie Liccardo Pacula, Legalizing Marijuana: Issues to Consider Before Reforming California State Law, Testimony Before the California State Assembly Public Safety Committee (Oct. 28, 2009), available at http://www.rand.org/pubs/testimonies/2009/RAND_CT334.pdf.

42. W. M. Compton et al., *supra* note 22.

ual allowance. Who would buy marijuana from a state-regulated store and pay the \$50 tax per ounce in addition to the sale price when they can either grow it themselves or buy it at a much lower price from a friend or neighbor? In this way, the RCTCA undermines its supporters' lavish revenue claims.

Other Negative Social Costs

In addition to its direct effects on individual health, even moderate marijuana use imposes significant long-term costs through the ways that it affects individual users. Marijuana use is associated with cognitive difficulties and influences attention, concentration, and short-term memory. This damage affects drug users' ability to work and can put others at risk. Even if critical workers—for example, police officers, airline pilots, and machine operators—used marijuana recreationally but remained sober on the job, the long-term cognitive deficiency that remained from regular drug use would sap productivity and place countless people in danger. Increased use would also send health care costs skyrocketing—costs borne not just by individual users, but also by the entire society.

For that reason, among others, the Obama Administration also rejects supporters' economic arguments. In his speech, Kerlikowske explained that tax revenue from cigarettes is far outweighed by their social costs: "Tobacco also does not carry its economic weight when we tax it; each year we spend more than \$200 billion and collect only about \$25 billion in taxes." If the heavy taxation of cigarettes is unable even to come close to making up for the health and other costs associated with their use, it seems doubtful at best that marijuana taxes would be sufficient to cover the costs of legalized marijuana—especially considering that, in addition to the other dangers of smoking marijuana, the physical health effects of just three to four joints are equivalent to those of an entire pack of cigarettes.

Other claims also do not measure up. One of the express purposes of the California initiative is to "put dangerous, underground street dealers out of business, so their influence in our communities will fade."⁴³ But as explained above, many black-market dealers would rationally choose to remain in the black market to avoid taxation and regulation. Vibrant gray markets have developed throughout the world for many products that are legal, regulated, and heavily taxed. Cigarettes in Eastern Europe, alcohol in Scandinavia, luxury automobiles in Russia, and DVDs in the Middle East are all legal goods traded in gray markets that are wracked with violence. In Canada, an attempt at a \$3 per pack tax on cigarettes was greeted with the creation of a black market that "accounted for perhaps 30 percent of sales."⁴⁴

Further, even if the RCTCA were to pass, marijuana would remain illegal in the entire United States under federal law while taxed only in California, a situation that would strengthen both California's gray market and the nationwide black market in illegal drugs. Fueled by generous growing allowances and an enormous supply in California, criminal sales operations would flourish as excess California marijuana was sold outside the state and, at the same time, out-of-state growers attempted to access the more permissive market inside the state.

In sum, legalization would put additional strain on an already faltering economy. In 2008, marijuana alone was involved in 375,000 emergency room visits.⁴⁵ Drug overdoses already outnumber gunshot deaths in America and are approaching motor vehicle crashes as the nation's leading cause of accidental death.⁴⁶ It is true that taxing marijuana sales would generate some tax revenue, but the cost of handling the influx of problems resulting from increased use would far outweigh any gain made by marijuana's taxation. Legalizing marijuana would serve only to compound the problems already associated with drug use.

43. The Regulate, Control and Tax Cannabis Act of 2010 § 2B5.

44. See CALIFORNIA SECRETARY OF STATE, *supra* note 6 at 20.

45. Drug Abuse Warning Network, <http://dawninfo.samhsa.gov/default.asp> (last visited August 31, 2010).

46. See Letter from Attorney James Wheaton, to Neil Amos, *supra* note 2.

Social Dislocation and Organized Crime

The final two arguments of those favoring legalization are intertwined. According to advocates of legalization, the government's efforts to combat the illegal drug trade have been an expensive failure. Consequently, they argue, focusing on substance abuse and treatment would be a more effective means of combating drug abuse while reducing the violence and social ills stemming from anti-drug enforcement efforts.

There is no doubt that if marijuana were legalized, more people, including juveniles, would consume it. Consider cigarettes: While their purchase by people under 18 is illegal, 20 percent of high school students admit to having smoked cigarettes in the past 30 days.⁴⁷ Marijuana's illegal status "keeps potential drug users from using" marijuana in a way that no legalization scheme can replicate "by virtue of the fear of arrest and the embarrassment of being caught."⁴⁸ With increased use comes increased abuse, as the fear of arrest and embarrassment will decrease.

Legalization advocates attempt to create in the minds of the public an image of a typical "responsible" user of marijuana: a person who is reasonable and accountable even when under the influence of marijuana. And for those few that don't fit that image? Society will treat them and restore them to full health. The facts, however, are much uglier.

The RAND Corporation projects a 50 percent increase in marijuana-related traffic fatalities under the RCTCA.⁴⁹ That alone should weigh heavily on California voters this fall. In a 2008 national survey, approximately 3 million Americans 12 years old or older started using illicit drugs in the past year—almost 8,000 new users per day. The most commonly used illicit drug is marijuana, especially

among the 20 million Americans over 12 who were users in 2008. In California, 62 percent of all marijuana treatment cases are already individuals under 21.⁵⁰ Legalization will increase the number of underage users.

Keeping marijuana illegal will undoubtedly keep many young people from using it.⁵¹ Eliminate that criminal sanction (and moral disapprobation), and more youth will use the drug, harming their potential and ratcheting up treatment costs.

Educators know that students using marijuana underperform when compared to their non-using peers. Teachers, coaches, guidance counselors, and school principals have seen the negative effect of marijuana on their students. The Rev. Dr. D. Stuart Dunnan, Headmaster of Saint James School in St. James, Maryland, says of marijuana use by students:

The chemical effect of marijuana is to take away ambition. The social effect is to provide an escape from challenges and responsibilities with a like-minded group of teenagers who are doing the same thing. Using marijuana creates losers. At a time when we're concerned about our lack of academic achievement relative to other countries, legalizing marijuana will be disastrous.⁵²

Additionally, making marijuana legal in California will fuel drug cartels and violence, particularly because the drug will still be illegal at the national level. The local demand will increase in California, but reputable growers, manufacturers, and retailers will still be unwilling—as they should be—to produce and distribute marijuana. Even without the federal prohibition, most reputable producers would not survive the tort liability from such a dangerous product. Thus, the vacuum will be filled by illegal drug cartels.

47. Centers for Disease Control and Prevention, Faststats—Smoking, <http://www.cdc.gov/nchs/fastats/smoking.htm> (last visited August 31, 2010).

48. DAVID G. EVANS, IN SUPPORT OF THE UNITED NATIONS DRUG CONVENTIONS, 10 (2d ed., 2009).

49. CALIFORNIA SECRETARY OF STATE, *supra* note 6 at 41.

50. CALIFORNIA SECRETARY OF STATE, *supra* note 6 at 36.

51. DAVID G. EVANS, *supra* note 48 at 10.

52. Telephone interview with Father Dunnan, A.B. (Harvard University), A.M. (Harvard University), M.A. (Oxford University), D.Phil. (Oxford University) (June 9, 2010).

According to the Department of Justice's National Drug Threat Assessment for 2010, Mexican drug trafficking organizations (DTOs) "have expanded their cultivation operations in the United States, an ongoing trend for the past decade.... Well-organized criminal groups and DTOs that produce domestic marijuana do so because of the high profitability of and demand for marijuana in the United States."⁵³

Legalize marijuana, and the demand for marijuana goes up substantially as the deterrence effect of law enforcement disappears. Yet not many suppliers will operate legally, refusing to subject themselves to the established state regulatory scheme—not to mention taxation—while still risking federal prosecution, conviction, and prison time. So who will fill the void?

Violent, brutal, and ruthless, Mexican DTOs will work to maintain their black-market profits at the expense of American citizens' safety. Every week, there are news articles cataloguing the murders, kidnappings, robberies, and other thuggish brutality employed by Mexican drug gangs along the border. It is nonsensical to argue that these gangs will simply give up producing marijuana when it is legalized; indeed, their profits might soar, depending on the actual tax in California and the economics of the interstate trade. While such profits might not be possible if marijuana was legalized at the national level and these gangs were undercut by mass production, that is unlikely ever to happen. Nor does anyone really believe that the gangs will subject themselves to state and local regulation, including taxation. And since the California ballot does nothing to eliminate the black market for marijuana—quite the opposite, in fact—legalizing

marijuana will only incentivize Mexican DTOs to grow more marijuana to feed the demand and exploit the black market.

Furthermore, should California legalize marijuana, other entrepreneurs will inevitably attempt to enter the marketplace and game the system. In doing so, they will compete with Mexican DTOs and other criminal organizations. Inevitably, violence will follow, and unlike now, that violence will not be confined to the border as large-scale growers seek to protect their turf—turf that will necessarily include anywhere they grow, harvest, process, or sell marijuana. While this may sound far-fetched, Californians in Alameda County are already experiencing the reality of cartel-run marijuana farms on sometimes stolen land,⁵⁴ protected by "guys [who] are pretty heavily armed and willing to protect their merchandise."⁵⁵

It is not uncommon for drugs with large illegal markets to be controlled by cartels despite attempts to roll them into the normal medical control scheme. For instance, cocaine has a medical purpose and can be prescribed by doctors as *Erythroxylum coca*, yet its true production and distribution are controlled by drug cartels and organized crime.⁵⁶ As competition from growers and dispensaries authorized by the RCTCA cuts further into the Mexican DTOs' business, Californians will face a real possibility of bloodshed on their own soil as the cartels' profit-protection measures turn from defensive to offensive.

Thus, marijuana legalization will increase crime, drug use, and social dislocation across the state of California—the exact opposite of what pro-legalization advocates promise.

53. U.S. DEPARTMENT OF JUSTICE, MARIJUANA AVAILABILITY—NATIONAL DRUG THREAT ASSESSMENT 2010, available at <http://www.justice.gov/ndic/pubs38/38661/marijuana.htm#Marijuana>.

54. While this paper does not express any position on the issue, it is interesting to note that, as one unintended consequence of these illegal marijuana farms, the legal owners of the plots of land occupied by cartel members could lose the land to the drug lords at some future date under California's adverse possession laws.

55. Aaron Swarts, "Pot 'Cartels' a Reality in Rural Alameda County" (Feb. 19, 2009), available at www.californiapolicechiefs.org/nav_files/marijuana_files/files/AaronSwarts.pdf.

56. DEPARTMENT OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2009, 1, available at http://www.justice.gov/dea/concern/18862/ndic_2009.pdf.

Conclusion

Pro-marijuana advocates promoting the Regulate, Control and Tax Cannabis Act of 2010 invite Californians to imagine a hypothetical and idyllic “pot market,” but America’s national approach to drug use, addiction, and crime must be serious, based on sound policy and solid evidence.

In 1982, President Ronald Reagan adopted a national drug strategy that took a comprehensive approach consisting of five components: international cooperation, research, strengthened law enforcement, treatment and rehabilitation, and prevention and education. It was remarkably successful: Illegal drug use by young adults dropped more than 50 percent.

Reagan was right to make drug control a major issue of his presidency. Illegal drugs such as marijuana are responsible for a disproportionate share of violence and social decline in America. Accordingly, federal law, representing the considered judgment of medical science and the nation’s two political branches of government, takes the unequivocal position that marijuana is dangerous and has no significant beneficial uses.

California cannot repeal that law or somehow allow its citizens to contravene it. Thus, it has two options. By far the best option is to commit itself seriously to the federal approach and pursue a strategy that attempts to prevent illegal drug use in the first place and reduce the number of drug users. This may require changes in drug policy, and perhaps in sentencing guidelines for marijuana

users charged with simple possession, but simply legalizing a harmful drug—that is, giving up—is not a responsible option.

The other option is to follow the above path in the short term while conducting further research and possibly working with other states in Congress to consider changes in federal law. Although those who oppose the legalization of marijuana have every reason to believe that further, legitimate scientific research will confirm the dangers of its use, no side should try to thwart the sober judgment of the national legislature and sister states.

In short, no state will likely be allowed to legalize marijuana on its own, with such serious, negative cross-state spillover effects. Yet even if California could act as if it were an island, the legalization route would still end very badly for the Golden State. There is strong evidence to suggest that legalizing marijuana would serve little purpose other than to worsen the state’s drug problems—addiction, violence, disorder, and death. While long on rhetoric, the legalization movement, by contrast, is short on facts.

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