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**Written Testimony
“Conflict Between State and Federal Laws”**

Chairman Leahy, Ranking Member Grassley, distinguished members of the Committee, thank you for providing me with the opportunity to appear before you today to discuss marijuana policy, and more specifically, state laws authorizing the legalization of marijuana.

I have studied, researched, and written about drug policy, drug markets, drug prevention, drug treatment, criminal justice policy, addiction, and public policy analysis for almost 18 years. Most recently, from 2009-2011, I served in the Obama Administration as a senior drug policy advisor. I am currently the co-founder, with former Congressman Patrick J. Kennedy, of Project SAM (Smart Approaches to Marijuana). I am also the author of *Reefer Sanity: Seven Great Myths About Marijuana* (Beaufort).

I am delighted to share with you my perspective, based on evidence and experience, on current marijuana policies in the United States.

Because I share the Obama Administration’s drug control goals of reducing drug abuse and its consequences, as laid out in the President’s *National Drug Control Strategy*, I found the recent guidance by the U.S. Deputy Attorney General (hereafter “Cole 2013”) disturbing on both legal and policy grounds. The guidance, which expressly defers the Department of Justice’s (hereafter “Department”) right to challenge and preempt laws legalizing marijuana, contradicts both the Controlled Substances Act (CSA) and policy principles designed to protect public health and safety.

Colorado and Washington have now been given the green light to become *the first jurisdictions in the world* to allow the retail sales and commercial production of marijuana, far surpassing more relatively modest marijuana policy liberalization measures taken up in countries like the Netherlands or Spain. Though marijuana use was not subject to federal criminal penalties in the United States until the 1930s, its mass commercial production and sales has never taken place here until now. Perhaps the most striking feature of Cole 2013 is that it explicitly omits the creation of large, for-profit entities in its criteria for possible federal action in the future.

The Importance of the CSA

Indeed, besides having an effect of violating the CSA on legal grounds, the Department's guidance flies in the face of the evidence showing that marijuana should remain illegal. The new guidance endangers Americans since it will facilitate the creation of a large industry for marijuana use, production, trafficking, and sale. The CSA is an important tool for promoting public health. By keeping marijuana illegal, its use is lower than the use of our legal drugs. About 52% of Americans regularly drink, 27% use tobacco products, and yet only 8% currently use marijuana, though this number has been rising in recent years (about 25% since 2007) as we have become more accepting of marijuana as a country.¹

I applaud the way the CSA has been so far used by the federal government – not to go after low-level users with an addiction problem, but instead to target drug traffickers and producers. Now, with Cole 2013, we are entering a whole new world where those drug traffickers and producers are getting a “green light” from the federal government to proceed.

International Law

By giving Washington and Colorado the go-ahead to start a massive for-profit, commercial industry for marijuana, the United States will violate its treaty obligations under the United Nations Single Convention on Narcotic Drugs of 1961 and its supplementary treaties, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These treaties make up the global system of drug control to which almost every country in the world has agreed. Already, with respect to laws authorizing both the recreational and medical use of marijuana, the International Narcotics Control Board (INCB), the quasi-judicial, independent body that interprets and enforces international drug laws, has sent several stern messages and warnings to United States officials about how such laws contradict our treaty obligations.²

¹ Substance Abuse and Mental Health Services Administration, *Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

² See for example: United Nations Information Services. (2012, November 15). INCB President voices concern about the outcome of recent referenda about non-medical use of cannabis in the United States in a number of states [Press Release]. Retrieved from: http://www.incb.org/documents/Publications/PressRelease/PR2012/press_release_151112.pdf United Nations Information Services. (2013, March 13). INCB President calls on the United States Government to address initiatives aimed at permitting recreational drug use [Press Release]. Retrieved from: http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release140313.pdf United Nations Information Services. (2013, March 15). INCB President expresses grave concern about inadequately regulated medical cannabis schemes which can lead to increased abuse [Press Release]. Retrieved from: http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release150313.pdf

Last week I was invited to speak about legalization to a group of Mexican lawmakers in Mexico City. Universally they asked, “Will people we (the Mexican government) consider criminals – drug traffickers and producers – now be able to flee safely to Colorado and Washington under your new laws?” They also asked me: “How can your government keep telling Mexico to stop producing and trafficking marijuana when your government is now openly approving and facilitating an increase in marijuana demand? Indeed, how can America discuss international law on any subject with authority anymore?” I had no good answers for them, and I worry about what Cole 2013 will mean for our diplomats abroad. Indeed, as the US increasingly cites international law as a reason for enforcing environmental regulations or military intervention, our case for doing so is severely weakened now that we are openly defying and indeed even promoting the violation of international law.

The Consequences of Legalization

In its memo, the Department lists priority areas it will focus on to determine future intervention. The rest of my testimony is dedicated to showing how some of these areas *have already* been violated under existing marijuana laws since in many respects we have already witnessed the effects of the *de facto* legalization of retail marijuana sales under state laws authorizing the use of marijuana for medical purposes:

(1) The distribution of marijuana to minors

Colorado provides an instructive example here. Though they legalized marijuana as medicine in 2000, it was not until about 2009 that marijuana stores were established – about 500 by 2012. The number of cardholders rose from about 1000 in 2006 to 108,000 in 2012.³

Anyone who has been to Colorado since 2009 can get a sense of what full legalization looks like already. Mass advertising, promotion, using items that are attractive to kids – like “medical marijuana lollipops,” “Ring Pots,” “Pot-Tarts” etc. – are all characteristics of current policy.

What has been the result of this *de facto* legalization for kids? For one, drug-related referrals for high school students testing positive for marijuana have increased. During 2007 – 2009 an average of 5.6 students tested positive for marijuana. During 2010 – 2012 the average number of students who tested positive for marijuana increased to 17.3 students per year. In 2007, tests positive for marijuana made up 33 percent of the total drug screenings, by 2012 that number increased to 57 percent. A member of the Colorado Taskforce charged to regulate marijuana who also works for a drug testing

³ Rocky Mountain HIDTA. (August 2013). *The Legalization of Marijuana in Colorado: The Impact, Preliminary Report* (volume 1).

company commented to the press that “A typical kid (is) between 50 and 100 nanograms. Now we’re seeing these up in the over 500, 700, 800, climbing.”⁴

The journal *JAMA Pediatrics* reported that unintentional marijuana poisonings among kids have risen significantly since marijuana as medicine has become available.⁵ Other peer-reviewed papers are finding that medical marijuana is easily diverted to youth. The *Journal of the American Academy of Child and Adolescent Psychiatry* in 2012 surveyed 164 Denver-area teens in treatment, and 121 of them -- or nearly 74 percent -- said they had used someone else's medical marijuana.⁶

This is all consistent with a recent National Bureau for Economic Research paper conducted by some RAND researchers who found that specific dimensions of laws authorizing the use of marijuana for medical purposes, namely home cultivation and legal dispensaries – two features found in Colorado and other states with similar laws – are positively associated with marijuana use and “have important implications for states considering legalization of marijuana.”⁷

(2) The revenue from the sale of marijuana going to criminal enterprises, gangs, and cartels:

Department of Justice officials have publicly said that the sales of marijuana for supposedly “medical” purposes are in some cases going to criminal enterprises and foreign drug trafficking groups.⁸ “It’s very clear to me that there’s outside sources,” said Jeff Sweetin, Special Agent In Charge of the U.S. Drug Enforcement Agency in Colorado, in a news article. “From my investigations, I can tell you what the foreign sources are; they’re foreign cartel sources.” The news story reported that “Sweetin says a large percentage of the pot consumed by medical marijuana patients ‘absolutely’ comes from Mexico.” Sweetin continued, “These are real organized crime groups. There’s a faction that wants you to believe that these are just guys that are listening to their music, they’re driving their van, they’re peaceful guys and they’re moving a couple of ounces a week to people that are not doing any problems. That’s not what’s happening.”

This is also the case in other states, like California, where the U.S. Secret Service and the DEA were involved in “what has amounted to a four-year investigation ... into an organized criminal enterprise involving large-scale marijuana distribution, not only in the Los Angeles area, but throughout the United States. This criminal enterprise hired known

⁴ See Conspire! Drug Testing Results and “Drug Testing Company Sees Spike in Children Using Marijuana” found at <http://denver.cbslocal.com/2013/03/06/drug-testing-company-sees-spike-in-children-using-marijuana/>

⁵ Wang, S.G., Roosevelt, G., & Heard, K. (2013). Pediatric Marijuana Exposures in a Medical Marijuana State. *JAMA Pediatrics*, 167(7), 631.

⁶ Salomonsen-Sautel, S., et al. (2012). Medical Marijuana Use among Adolescents in Substance Abuse Treatment. *American Academy of Child & Adolescent Psychiatry*, 5(7), 5.

⁷ (Pacula, R. et al. 2013). “Assessing the Effects of Medical Marijuana Laws on Marijuana and Alcohol Use: The Devil is in the Details.” NBER Working Paper No. 19302, August 2013, JEL No. I18,K32,K42

⁸ Mexican Gangs Linked To Colorado's Pot: Drug Enforcement Chief Says 'Organized Crime' Here. (2010, January 7). *ABC 7 News, the Denver Channel*. Retrieved from: <http://www.thedenverchannel.com/news/mexican-gangs-linked-to-colorado-s-pot>

gang members as enforcers. This organization was involved in the operation of multiple retail marijuana dispensaries generating massive profits, repeatedly showing their willingness to use violence and intimidation to expand their operations and dissuade competition. To date, there have been 26 documented crimes...”⁹

As a Los Angeles newspaper mentioned in a story about dispensaries and criminal gangs, “Many of the dispensaries and grow houses have ties to organized crime and sell to street dealers as well, detectives said.” The story quoted L.A. County Sheriff’s Detective David Mertens who said, “Most of the dispensaries are getting pot from these indoor grows,” said L, who specializes in narcotics investigations. “It’s not just the dispensaries they’re growing for. They’re also selling to street dealers.”¹⁰

(3) The diversion of marijuana from states where it is legal under state law in some form to other states:

Once again, this is already happening. And simple economics would dictate that this is hardly surprising. As the price for marijuana plummets in legalization states, we can expect cheap marijuana to be sold in non-legalization states for a handsome profit. As mentioned in a recent law enforcement report¹¹, the El Paso Intelligence Center (EPIC) has established the National Seizure System (NSS) for voluntary reporting interdiction seizures throughout the country. According to this law enforcement report, in 2012, there were 274 Colorado marijuana interdiction seizures destined for other states compared to 54 in 2005. This is a 407 percent increase. Of the 274 seizures in 2012, there were 37 different states destined to receive marijuana from Colorado. The most common destinations were Kansas (37), Missouri (30), Illinois (22) Texas (18), Wisconsin (18), Florida (16) and Nebraska (13). There were some seizures in which the destination state was unknown. In 2012, there were 7,008 pounds of Colorado marijuana seized by interdictions that were destined for other states in the country.

(4) State authorized marijuana activity being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; also violence and the use of firearms in the cultivation and distribution of marijuana

Though most marijuana users do not commit violent crimes, the retail sales of *de facto* legal marijuana has been linked to violence, firearms, illegal activity, and other illegal drugs. A 2008 report from the California Police Chiefs Association documents how “marijuana storefront businesses have allowed criminals to flourish in California” and that “some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other

⁹ Romero, D. (2013, April 17). Marijuana Shops In WeHo Raided As Gang-Related, Criminal Enterprises, Cops Say. *LA Weekly*. Retrieved from: http://blogs.laweekly.com/informer/2013/04/beverly_hills_marijuana_bust.php

¹⁰ Markus, B.P. (2010, September 3). Pot houses linked to gangs, marijuana dispensaries. *San Gabriel Valley Tribune*. Retrieved from: <http://www.sgvtribune.com/general-news/20100904/pot-houses-linked-to-gangs-marijuana-dispensaries>

¹¹ Rocky Mountain HIDTA. (August 2013). *The Legalization of Marijuana in Colorado: The Impact, Preliminary Report* (volume 1).

legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.”¹² Reports by the California Police Chiefs Association and Colorado law enforcement officials document numerous instances where murder, illegal drug trafficking, robberies, and other crimes take place at or near marijuana storefronts.

(5) An increase in drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use

The adverse consequences of marijuana use take a major toll on America. As the movement to legalize marijuana has gained momentum over the past decade – legalization campaigners have spent tens of millions of dollars on pro-marijuana campaigns that have not only focused on changing state laws but also on creating marijuana producers associations and aiming messages at NASCAR and NFL players and fans – youth perceptions of the harmfulness of marijuana has dropped dramatically. This is troubling because marijuana use has the potential to be very harmful to adolescents, whose brains are developing until age 25.

Marijuana advocates will claim that regulations surrounding legal marijuana will make it harder for youth to access marijuana, since they will have to produce identification to obtain marijuana. However, our experience with another intoxicant that can be deadly on the roads and also inhibit learning outcomes – alcohol – shows us that once a drug is accepted, normalized, and commercialized, youth will have an easier time accessing it than if it was illegal. For example, a study from Columbia University found that alcohol and cigarettes were the most readily accessible substances for youth, with 50% and 44%, respectively, of youth reporting that they could obtain them within a day. Youth were least likely to report that they could get marijuana within a day (31%); 45% report that they would be unable to get marijuana at all.¹³

Marijuana advocates will also claim that we can learn from our tobacco experience – no one has been arrested for tobacco use and yet fewer young people use tobacco compared to marijuana. But this claim completely neglects the social norm and media environment that has emerged in the past two decades against tobacco. Tobacco is looked down upon by many young people precisely because of government and non-governmental efforts to make it so. There is no more a multimillion dollar campaign to legitimize tobacco like there is today for marijuana, and certainly no one is making claims that tobacco is harmless, as advocates routinely do. By contrast, marijuana use is regularly glorified and promoted – and since the defunding of the National Youth Anti-Drug Media Campaign there is virtually no well-financed voice getting the message out to young people that marijuana use is harmful.

¹² White Paper on Marijuana Dispensaries, California Police Chiefs Association. (2009).

¹³ Adapted by CESAR from The National Center on Addiction and Substance Abuse at Columbia University (CASA), National Survey of American Attitudes on Substance Abuse XVII: Teens, 2012. Available online at <http://www.casacolumbia.org/upload/2012/20120822teensurvey.pdf> and CESAR at <http://www.cesar.umd.edu/cesar/cesarfax/vol21/21-43.pdf>

How harmful is marijuana use to adolescents? Despite popular myth and slick ad campaigns by pro-legalization advocates, scientists from the American Medical Association, American Academy of Pediatrics, American Psychological Association, American Society of Addiction Medicine, and other groups are universal in stating that marijuana use is harmful for young people.¹⁴ Marijuana use, especially among young people, is significantly associated with a reduction in IQ¹⁵, mental illness¹⁶, poor learning outcomes¹⁷, lung damage¹⁸, and addiction.¹⁹ According to the National Institutes of Health, one out of every six adolescents who use marijuana will become addicted²⁰, and many more will develop some problems as a result of marijuana use. There are about 400,000 emergency room admissions for marijuana every year – related to acute panic

¹⁴ American Medical Association. (2009). *Report 3 on the Council of Science and Public Health: Use of Cannabis for Medicinal Purposes*; Joffe, E. & Yancy, W.S. (2004). Legalization of Marijuana: Potential impact on youth. *Pediatrics: Official Journal of the American Academy of Pediatrics*, 113(6); American Psychological Association. (2009). *Position Statement on Adolescent Substance Abuse*; California Society of Addiction Medicine. (2009). *Impact of Marijuana on Children and Adolescents*.; *American Society of Addiction Medicine Statement Retrieved here: <http://www.asam.org/advocacy/find-a-policy-statement/view-policy-statement/public-policy-statements/2012/07/30/state-level-proposals-to-legalize-marijuana>*.

¹⁵ See Meier, M.H.; Caspi, A.; Ambler, A.; Harrington, H.; Houts, R.; Keefe, R.S.E.; McDonald, K.; Ward, A.; Poulton, R.; and Moffitt, T. Persistent cannabis users show neuropsychological decline from childhood to midlife. *Proceedings of the National Academy of Sciences* 109(40):E2657–E2664, 2012. Also Moffitt, T.E.; Meier, M.H.; Caspi, A.; and Poulton, R. Reply to Rogeberg and Daly: No evidence that socioeconomic status or personality differences confound the association between cannabis use and IQ decline. *Proceeding of the National Academy of Sciences* 110(11):E980-E982, 2013.

¹⁶ See for example: Andréasson S., et al. (1987). Cannabis and Schizophrenia: A longitudinal study of Swedish conscripts. *Lancet*, 2(8574); Moore, T.H., et al. (2007). Cannabis use and risk of psychotic or affective mental health outcomes: a systematic review. *Lancet*, 370(9584); Large M., et al. (2011). Cannabis Use and Earlier Onset of Psychosis: A Systematic Meta-analysis. *Archives of General Psychiatry*, 68(6); Harley, M., et al. (2010). Cannabis use and childhood trauma interact additively to increase risk of psychotic symptoms in adolescences. *Psychological Medicine*, 40(10); Lynch, M.J., et al. (2012). The Cannabis-Psychosis Link. *Psychiatric Times*.

¹⁷ Yucel, M., et al. (2008). Regional brain abnormalities associated with long-term heavy cannabis use. *Archives of General Psychiatry*, 65(6).

¹⁸ See for example: American Lung Association. (2012, November 27). Health Hazards of Smoking Marijuana. Retrieved from: <http://www.lung.org/stop-smoking/about-smoking/health-effects/marijuana-smoke.html>; Tashkin, D.P., et al. (2002). Respiratory and immunologic consequences of smoking marijuana. *Journal of Clinical Pharmacology*, 4(11); Moore, B.A., et al. (2005). Respiratory effects of marijuana and tobacco use in a U.S. sample. *Journal of General Internal Medicine*, 20(1); Tetrault, J.M., et al. (2007). Effects of marijuana smoking on pulmonary structure, function and symptoms. *Thorax*, 62(12); Tan, W.C., et al. (2009). Marijuana and chronic obstructive lung disease.

¹⁹ See for example: Anthony, J.C., Warner, L.A., Kessler, R.C. (1994). Comparative epidemiology of dependence on tobacco, alcohol, controlled substances, and inhalants: Basic findings from the National Comorbidity Survey. *Experiential and Clinical Psychopharmacology*, 2; Budney, A.J., et al. (2008). Comparison of cannabis and tobacco withdrawal: Severity and contributions to relapse. *Journal of Substance Abuse Treatment*, 35(4); Tanda, G., et al. (2003). Cannabinoids: Reward, dependence, and underlying neurochemical mechanisms – A recent preclinical data. *Psychopharmacology*, 169(2).

²⁰ Anthony, J.C., Warner, L.A., Kessler, R.C. (1994). Comparative epidemiology of dependence on tobacco, alcohol, controlled substances, and inhalants: Basic findings from the National Comorbidity Survey. *Experiential and Clinical Psychopharmacology*, 2.

attacks and psychotic episodes²¹ – and marijuana is the most cited drug for teens entering treatment.²²

As for drugged driving, a meta-analysis published in the peer-reviewed *Epidemiological Reviews* looked at nine studies conducted over the past two decades on marijuana and car-crash risk. It concluded, “drivers who test positive for marijuana or self-report using marijuana are more than twice as likely as other drivers to be involved in motor vehicle crashes.”²³ Indeed, we already know marijuana and driving is a growing problem in states with loose marijuana laws. In Colorado, though traffic fatalities fell 16 percent between 2006 and 2011 (consistent with national trends), fatalities involving drivers testing positive for marijuana rose 112 percent.²⁴

Experience Shows That “Regulation” Is Anything But

Finally, two independent reports released within days of each other last month documented how Colorado’s supposedly regulated system is not well regulated at all. In the first of the two audits, the Colorado State Auditor concluded that there were inappropriate recommendations made, a whopping 50% of recommendations were made by only 12 physicians, that the state had not “established a process for caregivers to indicate the significant responsibilities they are assuming for managing the well-being of their patients,” and that the state “cash fund” was out of compliance.²⁵

The second audit²⁶ reviewed the city of Denver’s medical marijuana licensing practices by the Department of Excise and Licenses. It concluded that the city of Denver “does not have a basic control framework in place for effective governance of the... medical marijuana program.” The auditors wrote how the medical marijuana records are “incomplete, inaccurate, inaccessible,” and that many medical marijuana businesses are operating without valid licenses. Moreover, the Department does not even know how

²¹ Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. (2011). Drug abuse warning network, 2008: National estimates of drug-related emergency department visits. *HHS Publication No. SMA 11-4618*. Rockville, MD.

²² Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. Treatment Episode Data Set (TEDS): 2000-2010. National Admissions to Substance Abuse Treatment Services. DASIS Series S-61, HHS Publication No. (SMA) 12-4701. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2012

²³ Mu-Chen Li, Joanne E. Brady, Charles J. DiMaggio, Arielle R. Lusardi, Keane Y. Tzong, and Guohua Li. (2011). “Marijuana Use and Motor Vehicle Crashes.” *Epidemiologic Reviews*.

²⁴ Colorado Department of Transportation Drugged Driving Statistics 2006 - 2011, Retrieved <http://www.coloradodot.info/programs/alcohol-and-impaired-driving/druggeddriving/drugged-driving-statistics.html>.

²⁵ Colorado Office of the State Auditor. (June 2013). *Medical Marijuana Regulatory System Part II Performance Audit*. Retrieved from: [http://www.leg.state.co.us/OSA/coauditor1.nsf/All/C9112BFFDE1559CE87257BA5007AE40F/\\$FILE/2194B%20MedMarijPart2%20June%202013.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/C9112BFFDE1559CE87257BA5007AE40F/$FILE/2194B%20MedMarijPart2%20June%202013.pdf)

²⁶ Office of the Auditor, Audit Services Division, City and County of Denver. (July 2013). *Medical Marijuana Licensing Performance Audit*. Retrieved from: http://www.denvergov.org/Portals/741/documents/Audits%202013/Medical_Marijuana_Licensing_Audit_Report_07-18-13.pdf

many medical marijuana businesses are operating in Denver. In addition, the audit reported that the Department's personnel lacked formal policies and procedures to govern the licensure process. Finally, the auditors concluded that the medical marijuana licensure fee was established arbitrarily and the Department does not know the extent to which the marijuana license fees cover the costs of administering the program.

As for implementing the laws passed in Washington and Colorado, earnest officials have the very difficult task of trying to create a regulatory regime that they consider responsible and safe. However, this has proven to be very difficult already. Even when trying to curb very reasonable things like advertising, or the selling of marijuana periodicals to minors, or the selling of items that would be attractive to children, they have faced obstacles. For example, the multimillion-dollar pro-legalization lobby in Colorado – who financed Amendment 64 with upwards of \$3 million – has already placed a billboard promoting marijuana use along the main boulevard leading to the Denver Sports Authority Field. The marijuana industry also sued Colorado when the state sought to place marijuana publications behind a counter in public retail stores “where persons under twenty-one years of age are present.”²⁷ The state eventually changed the law and now magazines such as *High Times* and *The Daily Doobie* will be sold within reach of children there. We can expect further first amendment challenges to advertising restrictions. Finally, we have also seen the proliferation of marijuana vending machines generating millions of dollars in revenue dispensing “medicine.” As *Bloomberg Businessweek* in May reported: “‘We are in the right place at the right time,’ says Bruce Bedrick, a 44-year-old chiropractor, occasional pot user, and chief executive officer of Medbox, maker of one of the world’s first marijuana vending machines. ‘We are planning to literally dominate the industry.’”²⁸ After spending decades trying to rid America of tobacco vending machines because of the obvious effect on increased access to children, it seems we are about to repeat history with marijuana.

None of this bodes well for the ushering in of an entirely new industry that will allow for the production and sales of marijuana. Why would we assume that an infinitely more difficult task – the full legalization of marijuana — will be better managed than the so-called medicinal use of marijuana?

Conclusion

The CSA explicitly states that the use, possession, trafficking, and sales of marijuana is against federal law. As the Department articulated in a 2011 letter to the city of Oakland, “Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, *is a violation of federal law regardless of state laws*

²⁷ *Trans-High Corp v Colorado (Denver)*

²⁸ See <http://www.businessweek.com/articles/2013-05-09/medbox-dawn-of-the-marijuana-vending-machine>

*permitting such activities (my emphasis).”*²⁹

By deferring its right to challenge state laws in Colorado and Washington, the Department is effectively authorizing state entities to violate federal law. It is approving of state infrastructures to generate revenue from an illegal substance, and, more generally, it is contradicting the Administration’s general posture on other issues – immigration, voting rights, civil rights, healthcare, etc. – that states cannot violate federal law at will.

Though the Department listed some “triggers” that might spur federal action, we do not have to wait for these phenomena to occur – they already are at alarming rates. Our experience with state laws authorizing the medicinal use of marijuana tells us that no matter what controls are put on marijuana stores (e.g. no advertising or selling to minors), these regulations are routinely violated, rarely enforced, and the sheer number of marijuana stories tend to overwhelm federal and state resources.

Already, as marijuana laws have become more permissive over the last decade, marijuana use has skyrocketed. In 2007, drug use had dipped to its lowest levels since 2001, but has since been on the rise. Last week the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Administration (SAMHSA) released its annual drug use survey. Although 12-to-17 year old marijuana use for boys and girls combined was relatively unchanged since 2011, the survey revealed a 20% increase in marijuana smoking among girls aged 12-17 since 2007, a 50% increase in the number of daily marijuana smokers among those aged 12 and up, a 12% increase in marijuana use among 18-25 year olds since 2007, and a 25% increase in marijuana use among the general population. The perceived risk of smoking marijuana once a month has fallen almost 30% since 2007. One can only surmise how much legalization will further weaken these numbers. Because it will make these numbers worse, the decision by the Department of Justice will undermine the President’s own efforts to boost education outcomes and improve health and healthcare in the United States.

We are at a precipice. By threatening legal action, the Administration can prevent the large-scale commercialization and retail sales of marijuana. Instead, we are about to usher in a new era of marijuana usage. Already, an executive from Microsoft is teaming up with a former Mexican president to try and “mint more marijuana millionaires than Microsoft” in his goal to create a national brand, the “Starbucks of Marijuana.”³⁰ In states that have failed at creating any sort of robust regulatory framework for marijuana as medicine, the effects of retail marijuana sales are already known – mass marketing and increased negative consequences. Authorizing the large scale, commercial production of marijuana will undoubtedly expand its access and availability. When we can prevent negative consequences of the commercial sale and production of marijuana now, why

²⁹ U.S. Department of Justice. (Feb. 11, 2011). Letter from U.S. Attorney Melinda Haag to John Russo, Oakland City Attorney.

³⁰ Ex-Microsoft exec plans 'Starbucks' of marijuana. (2013, May 31). *United Press International*. Retrieved from: http://www.upi.com/Top_News/US/2013/05/31/VIDEO-Ex-Microsoft-exec-plans-Starbucks-of-marijuana/UPI-41161369985400/

would we open the floodgates, hope for the best, and try with limited resources to patch everything up when things go wrong?