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## The Benefits of Marijuana Legalization and Regulation

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# The Benefits of Marijuana Legalization and Regulation

Tamar Todd\*

*There is increasing support for marijuana law reform than ever before, and the legalization of marijuana has many serious public policy implications. This paper highlights the problems with criminalizing marijuana use and its disparate impact on people of color. The criminalization of marijuana has also failed to meet its goals and has negative impact on individual and public health. Finally, criminalization impacts the workplace, environment, and public resources. In the end, data suggests that the legalization of marijuana reduces the harms of criminalization and is good for public policy.*

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## INTRODUCTION

There is something that makes people giggle when discussing marijuana—even if they are not smoking. People tend to treat the issue as a joke. But one thing Kevin Sabet and I agree on is that the debate over marijuana policy has serious public policy consequences. He believes that marijuana is bad. And I believe that the criminalization of marijuana is worse. Criminalization has disproportionately punished black and brown people, wasted billions of dollars, enriched the illicit market, damaged public health, devastated the environment, failed to reduce youth marijuana use and undermined people’s faith in the government.

I appreciate that the Heritage Foundation and Berkeley Law together have invited us to debate whether marijuana should be legalized or remain criminalized. Whether one cares about mass incarceration, or the environment, or public health, or tax revenue, or medical research, or labor, or children, or the honesty of our government, marijuana policy has serious implications on all of these issues.

This article focuses on what I believe are the top ten reasons that marijuana should be legalized for adults and controlled through regulation and taxation rather than criminalization.

### I. CRIMINALIZING PEOPLE WHO USE MARIJUANA UNDERMINES THE LEGITIMACY OF THE LAW.

Marijuana has been used for thousands of years for its medicinal and social effects, and it is the most commonly used illegal drug in the world.<sup>1</sup> Approximately one out of every seven American adults (14.1%) has used marijuana in the past year.<sup>2</sup> Over half of all American adults (51.1%) have used marijuana during their lives.<sup>3</sup> All of these people have committed a federal drug crime.

<sup>1</sup> ROBERT DEITCH, *HEMP: AMERICAN HISTORY REVISITED: THE PLANT WITH A DIVIDED HISTORY* (2003); ALISON MACK & JANET JOY, *MARIJUANA AS MEDICINE? THE SCIENCE BEYOND THE CONTROVERSY* (2000); MARTIN BOOTH, *CANNABIS: A HISTORY* (2005).

<sup>2</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., CTR. FOR BEHAVIORAL HEALTH STATISTICS & QUALITY, RESULTS FROM THE 2016 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES, Table 1.6B (2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-DETabs-2016/NSDUH-DETabs-2016.htm#>.

<sup>3</sup> *Id.*

Existing law makes tens of millions of hardworking and productive Americans illicit drug users by definition. The child in Colorado who is using marijuana to control severe epilepsy is committing a federal drug crime. The veteran who is using marijuana to manage symptoms of post-traumatic stress disorder is committing a federal drug crime. The cancer patient who uses marijuana to alleviate pain or to lessen reliance on opioid pain medication is committing a federal drug crime. The adult who chooses to consume marijuana with friends in the privacy of his or her own home is committing a federal drug crime.

What is the purpose of our federal criminal laws? To make criminals out of half of all adults? Based on the most recent Gallup poll in October 2017, sixty-four percent of Americans—two-thirds of people—believe that marijuana use should be legal.<sup>4</sup> A majority of Republicans think marijuana use should be legal.<sup>5</sup> The vast majority (seventy-five percent) of United States voters—across all demographics and party affiliations—oppose federal government enforcement of federal marijuana laws in states that have legalized marijuana for medical or adult use.<sup>6</sup> And ninety-four percent of Americans think medical marijuana—which is still completely illegal under federal law—should be legal. Is there any other issue in America today about which this high a percentage of Americans agree?<sup>7</sup>

Currently marijuana is classified as a Schedule I controlled substance.<sup>8</sup> The federal government placed marijuana in Schedule I in 1971, despite the findings of the Schafer Commission—a government commission appointed by Nixon to examine the scheduling of marijuana—which concluded that marijuana should be de-scheduled and decriminalized.<sup>9</sup>

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<sup>4</sup> Justin McCarthy, *Record-High Support for Legalizing Marijuana Use in U.S.*, GALLUP NEWS (Oct. 25, 2017), <http://news.gallup.com/poll/221018/record-high-support-legalizing-marijuana.aspx>.

<sup>5</sup> *Id.*

<sup>6</sup> *U.S. Voters Say 68–27% Let Transgender People Serve, Quinnipiac University National Poll Finds; Voters Disapprove 5-1 of GOP Handling of Health Care*, QUINNIPIAC U. POLL (Aug. 3, 2017), [https://poll.qu.edu/images/polling/us/us08032017\\_Ujm62prt.pdf/](https://poll.qu.edu/images/polling/us/us08032017_Ujm62prt.pdf/).

<sup>7</sup> *Id.*

<sup>8</sup> 21 U.S.C. § 812 (2012).

<sup>9</sup> See *U.S. v. Cannabis Cultivators Club*, 5 F. Supp. 2d 1086, 1105 (N.D. Cal. 1998); Gabriel Nahas & Albert Greenwood, *The First Report of The National Commission on Marihuana (1972): Signal of Misunderstanding or Exercise in Ambiguity*, 50 BULL. N.Y. ACAD. MED. 55 (1974).

Schedule I drugs are those that the government considers most serious, most dangerous.<sup>10</sup> Schedule I drugs have no accepted medical use and a high potential for abuse.<sup>11</sup> Heroin is a Schedule I drug.<sup>12</sup> Methamphetamine is Schedule II.<sup>13</sup> The federal government's scheduling of marijuana ignores the evidence that marijuana does have medical uses and does not have a high potential for abuse.<sup>14</sup>

Many people know that marijuana has medicinal value, regardless of the government's insistence otherwise, because many

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<sup>10</sup> 21 U.S.C. § 812.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., MARIJUANA AND MEDICINE: ASSESSING THE SCIENCE BASE (Janet E. Joy et al. eds., 1999); Vincent Vinciguerra et al., *Inhalation Marijuana as an Antiemetic for Cancer Chemotherapy*, N.Y. STATE J. MED. (Oct. 1988); D.I. Abrams et al., *Vaporization as a Smokeless Cannabis Delivery System: A Pilot Study*, 282 CLINICAL PHARMACOLOGY & THERAPEUTICS 572 (2007); Donald Abrams et al., *Short-Term Effects of Cannabinoids on Patients With HIV-1 Infection: A Randomized, Placebo-Controlled Clinical Trial*, 139 ANNALS OF INTERNAL MED. 258 (2003); Gregory T. Carter & Bill S. Rosen, *Marijuana in the Management of Amyotrophic Lateral Sclerosis*, 18 AM. J. OF HOSPICE & PALLIATIVE CARE 264 (2001); Marta Duran et al., *Preliminary Efficacy and Safety of an Oromucosal Standardized Cannabis Extract in Chemotherapy-induced Nausea and Vomiting*, 70 J. OF CLINICAL PHARMACOLOGY 656 (2010); M. Earleywine & S.S. Barnwell, *Decreased Respiratory Symptoms in Cannabis Users Who Vaporize*, 4 HARM REDUCTION J. (2007); M. Earleywine et al., *Case studies in cannabis vaporization*, 18 ADDICTION RES. & THEORY 243 (2010); George Fraser, *The Use of a Synthetic Cannabinoid in the Management of Treatment-Resistant Nightmares in Posttraumatic Stress Disorder (PTSD)*, 15 CNS NEUROSCIENCE & THERAPEUTICS 84 (2009); Eti Ganon-Elaza & Irit Akirav, *Cannabinoids Prevent the Development of Behavioral and Endocrine Alterations in a Rat Model of Intense Stress*, 37 NEUROPSYCHOPHARMACOLOGY 456 (2012); George R. Greer et al., *PTSD Symptom Reports of Patients Evaluated for the New Mexico Medical Cannabis Program*, 46 J. OF PSYCHOACTIVE DRUGS 73 (2014); A. Hazekamp et al., *Evaluation of a Vaporizing Device (Volcano) for the Pulmonary Administration of Tetrahydrocannabinol*, 95 J. OF PHARM. SCI. 1308 (2006); Richard Musty & Rita Rossi, *Effects of Smoked Cannabis and Oral 9-Tetrahydrocannabinol on Nausea and Emesis After Cancer Chemotherapy: A Review of State Clinical Trials*, 1 J. OF CANNABIS THERAPEUTICS 43 (2001); Timna Naftali et al., *Treatment of Crohn's Disease with Cannabis: An Observational Study*, 13 ISRAEL MED. ASS'N J. 582 (2011); K. Nelson et al., *A Phase II Study of Delta-9-Tetrahydrocannabinol for Appetite Stimulation in Cancer-Associated Anorexia*, 10 J. OF PALLIATIVE CARE 14 (1994); Santiago Papini et al., *Toward a Translational Approach to Targeting the Endocannabinoidsystem in Posttraumatic Stress Disorder: A Critical Review of Preclinical Research*, 104 BIOLOGICAL PSYCHOL. 8 (2015); Pablo Roitman et al., *Preliminary, Open-Label, Pilot Study PTSD*, 34 CLINICAL DRUG INVESTIGATION 587 (2014); Barth Wilsey et al., *Low Dose Vaporized Cannabis Significantly Improves Neuropathic Pain*, 14.2 J. OF PAIN 136 (2013).

people have had their own experiences consuming marijuana in a way that benefits their health or have family and friends who have had positive experiences with marijuana. They have felt it relieve pain. They have used it to relax. They have discovered on their own that marijuana is not the gateway to heroin and cocaine that the government warned it would be.

It is as though the government has spent the past fifty years stating that the sky is green rather than blue. The federal government says that we should believe this: because law enforcement says that the sky is green; because there are no sound scientific studies showing that the sky is blue; and because the Food and Drug Administration has not declared the sky to be blue. But what the government is forgetting is that everyone can look up at the sky and see for themselves what color it is.

Voters in states across the country are soundly rejecting a federal marijuana policy that is focused on continuing failed drug war policies, interfering with research, and denying the science that does exist. Through the ballot, voters are removing state and local law penalties for medical and recreational use. Nine states have legalized marijuana under state law,<sup>15</sup> nearly every state has adopted some form of medical marijuana law,<sup>16</sup> and countries around the world, including Canada, have robust medical marijuana laws and are legalizing, regulating, and taxing marijuana for adults to use.<sup>17</sup>

The bottom line is that a criminal law that is based on a rationale that most people know to be false, that criminalizes conduct that two-thirds of the people believe should be legal, and that makes half of all American adults criminals is not legitimate and serves to undermine people's faith in the law and the government. A law that the vast

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<sup>15</sup> Colorado (Measure 64), Washington (Initiative 502), and Washington, D.C. (Initiative 71) on November 6, 2012; Alaska (Measure 2) and Oregon (Measure 91) on November 4, 2014; and California (Proposition 64), Maine (Question 1), Massachusetts (Question 4), and Nevada (Question 2) on November 8, 2016; Vermont (H.511 (Act 86)) (Governor approved bill on January 22, 2018).

<sup>16</sup> *Medical Marijuana*, DRUG POL'Y ALLIANCE, <http://www.drugpolicy.org/issues/medical-marijuana> (last visited Mar. 22, 2018); *Legal Information by State & Federal Law*, AMERICANS FOR SAFE ACCESS, [http://www.safeaccessnow.org/state\\_and\\_federal\\_law](http://www.safeaccessnow.org/state_and_federal_law) (last visited Mar. 22, 2018).

<sup>17</sup> Access to Cannabis for Medical Purposes Regulations, SOR/2016-230 (Can.); Ian Austen, *Ready or Not, Recreational Marijuana Use is Coming to Canada*, N.Y. TIMES (Nov. 4, 2017), [https://www.nytimes.com/2017/11/04/world/canada/canada-marijuana-legal-justin-trudeau.html?\\_r=0](https://www.nytimes.com/2017/11/04/world/canada/canada-marijuana-legal-justin-trudeau.html?_r=0).

majority of people do not believe in and refuse to comply with loses its purpose and authority.

## II. THE CRIMINALIZATION OF MARIJUANA USE WAS BORN FROM RACIAL ANIMUS AND ENFORCEMENT OF THE LAWS HAS DISPROPORTIONATELY AFFECTED BLACK AND BROWN PEOPLE.

The criminalization of people who use marijuana was born of racial animus.<sup>18</sup> Xenophobia is so central to the story of marijuana that it is actually the reason why we call the cannabis plant “marijuana” while the rest of the world simply calls it by its name: cannabis.<sup>19</sup>

Cannabis was readily available and long used in medicines in the United States.<sup>20</sup> However, in the early 1900s with a surge of people from Mexico coming to the United States after the Mexican Revolution the media began to play on public fears about these new immigrants by making false claims about their marijuana use.<sup>21</sup>

These new fears were seized on by Harry Anslinger—the first real drug czar—who was a racist.<sup>22</sup> He zealously defended criminalizing

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<sup>18</sup> See, e.g., Richard J. Bonnie & Charles H. Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry Into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1011 (1970) (concluding that the most prominent reason for states’ decisions to criminalize marijuana was racial prejudice); Martin D. Carcieri, *Obama, the Fourteenth Amendment, and the Drug War*, 44 AKRON L. REV. 303, 325 (2011) (“U.S. marijuana prohibition has long been motivated largely by racism.”).

<sup>19</sup> See, e.g., *Single Convention on Narcotic Drugs, adopted* Mar. 30, 1961.

<sup>20</sup> See, e.g., RICHARD J. BONNIE & CHARLES H. WHITEBREAD, *THE MARIJUANA CONVICTION: A HISTORY OF MARIJUANA PROHIBITION IN THE UNITED STATES* 51–53 (1974); MARK EDDY, CONG. RESEARCH SERV., RL33211, *MEDICAL MARIJUANA: REVIEW AND ANALYSIS OF FEDERAL AND STATE POLICIES* 45 (2010) (“For most of American history, growing and using marijuana was legal under both federal law and the laws of the individual states.”).

<sup>21</sup> See, e.g., Bonnie & Whitebread, *supra* note 18, at 1011 (concluding that the most prominent reasons for states’ decisions to criminalize marijuana was racial prejudice); BONNIE & WHITEBREAD, *supra* note 20, at 51–53; Carcieri, *supra* note 18, at 325 (“U.S. marijuana prohibition has long been motivated largely by racism.”); Michael Vitiello, *Proposition 215: De Facto Legalization of Pot and the Shortcomings of Direct Democracy*, 31 U. MICH. J. L. REFORM 707, 749–51 (1998) (“In 1937, Harry J. Anslinger was serving as the United States Commissioner of Narcotics. . . . [His] appeal to racism and hysteria was unabashed. He and other proponents of the Marijuana Tax Act argued that marijuana caused criminal and violent behavior. During the brief hearings on the Act, Anslinger stated that, ‘[m]arihuana [was] an addictive drug which produce[d] in its users insanity, criminality, and death.’”).

<sup>22</sup> BONNIE & WHITEBREAD, *supra* note 20; Vitiello, *supra* note 21, at 707, 749–51.

people who used marijuana, using racist language and making racist claims to do so. He maintained that marijuana was primarily being used by Mexicans and African Americans who were bringing it into white communities.<sup>23</sup> He falsely claimed that marijuana would turn people into psychopaths, murderers, and rapists.<sup>24</sup> These were the justifications for the criminalization of marijuana.

Racial discrimination is present in the enforcement of marijuana laws across the country. Blacks and whites use and sell marijuana at very similar rates.<sup>25</sup> However, black people are disproportionately arrested, punished, and fined.<sup>26</sup> Police arrest blacks for marijuana possession at higher rates than whites in every state and nearly every city and county in the United States.<sup>27</sup> In eleven states the rate of arrest is at least six times higher for blacks than for whites.<sup>28</sup>

In California, there have been nearly five hundred thousand marijuana arrests in the last decade.<sup>29</sup> In 2015, black people in the state were more than twice as likely as white people to be arrested for a marijuana misdemeanor and nearly five times as likely as white people to be arrested for a marijuana felony.<sup>30</sup>

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<sup>23</sup> BONNIE & WHITEBREAD, *supra* note 20; Vitiello, *supra* note 21.

<sup>24</sup> JOHN HUDAK, *MARIJUANA: A SHORT HISTORY* 36 (2016).

<sup>25</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 2, Tables 1.24A, 1.24B; AM. C.L. UNION, *THE WAR ON MARIJUANA IN BLACK AND WHITE* (2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white>; MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); HUMAN RIGHTS WATCH, *DECADES OF DISPARITY: DRUG ARRESTS AND RACE IN THE UNITED STATES* (2009); DORIS M. PROVINE, *UNEQUAL UNDER THE LAW: RACE IN THE WAR ON DRUGS* (2007); MICHAEL TONRY, *PUNISHING RACE: A CONTINUING AMERICAN DILEMMA* (2011); Katherine Beckett et al., *Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests*, 44 *CRIMINOLOGY* 105 (2006); Meghana Kakade et al., *Adolescent Substance Use and Other Illegal Behaviors and Racial Disparities in Criminal Justice System Involvement: Findings From a U.S. National Survey*, 102 *AM. J. OF PUB. HEALTH* 1307 (2012);

<sup>26</sup> AM. C.L. UNION, *supra* note 25.

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *It's Not Legal Yet: Nearly 500,000 Californians Arrested for Marijuana in Last Decade*, *DRUG POL'Y ALL.*, [http://www.drugpolicy.org/sites/default/files/California\\_Marijuana\\_Arrest\\_Report\\_081816.pdf](http://www.drugpolicy.org/sites/default/files/California_Marijuana_Arrest_Report_081816.pdf) (last visited Mar. 22, 2018).

<sup>30</sup> *Id.*



There have been dramatic declines in marijuana arrests in states that have legalized.<sup>31</sup> However, black people remain overrepresented among the people arrested for conduct that remains criminalized, even after legalization, such as citations for consumption of marijuana in a public place.<sup>32</sup> Reducing the numbers of people harmed by a racially disproportionate arrest or citation by thousands and thousands is a positive step forward. However, more reform is necessary to eliminate racial disparities in drug law enforcement.

### III. MARIJUANA PROHIBITION HAS BEEN A COMPLETE FAILURE EVEN BY ITS OWN STATED GOALS.

Presumably more legitimate purposes of our drugs laws than racial subjugation include reducing drug use, reducing access by minors, and promoting health. The criminalization of marijuana has failed to accomplish these goals across the board.

Enforcing marijuana laws costs the United States about \$3.6 billion a year but has failed to diminish the use or availability of marijuana.<sup>33</sup> A substantial percentage of the adult population uses or has used marijuana.<sup>34</sup> Children report that they can easily obtain marijuana.<sup>35</sup>

Over the past few decades, under a system of criminalization, marijuana has become more potent.<sup>36</sup> Marijuana is often cultivated

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<sup>31</sup> *So Far, So Good, What We Know About Marijuana Legalization in Colorado, Washington, Alaska, Oregon, and Washington, D.C.*, DRUG POL'Y ALL. 5, [http://www.drugpolicy.org/sites/default/files/Marijuana\\_Legalization\\_Status\\_Report\\_101316.pdf](http://www.drugpolicy.org/sites/default/files/Marijuana_Legalization_Status_Report_101316.pdf) (last visited Mar. 22, 2018).

<sup>32</sup> *Id.*

<sup>33</sup> AM. C.L. UNION, *supra* note 25, at 10.

<sup>34</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 2, Table 1.6B.

<sup>35</sup> *Id.* at Table 1.2B.

<sup>36</sup> Zlatko Mehmedic et al., *Potency Trends of  $\Delta^9$ -THC and Other Cannabinoids in Confiscated Cannabis Preparations from 1993 to 2008*, 55.5 J. OF FORENSIC SCI. 1209 (2010); Michael Pollan, *How Pot Has Grown*, N.Y. TIMES MAG. (Feb. 19, 1995), <http://michaelpollan.com/articles-archive/how-pot-has-grown/>. See EXEC. OFFICE OF THE PRESIDENT, NATIONAL DRUG CONTROL STRATEGY: DATA SUPPLEMENT 2016 (2016), [https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/2016\\_ndcs\\_data\\_supplement\\_20170110.pdf](https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/2016_ndcs_data_supplement_20170110.pdf); Christopher Ingraham, *Jeff Sessions Wants to Make Illegal Drugs Less Potent and More Expensive. We've Got Some Bad News for Him.*, WASH. POST (July 12, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/07/12/jeff-sessions-wants-to-make-illegal-drugs-less-potent-and-more-expensive-weve-got-some-bad-news-for-him>.

indoors in order to avoid detection.<sup>37</sup> This type of cultivation can result in stronger marijuana and increased energy consumption.<sup>38</sup>

Finally, criminalization has created illicit markets marked by violence, corruption, and enriched cartels, and with a total value in the tens of billions of dollars per year.<sup>39</sup> This is exactly what happened with alcohol prohibition and why it was repealed.<sup>40</sup> But even in the era of alcohol prohibition, we did not criminalize users.<sup>41</sup> It was not illegal to use or possess alcohol, just to produce and to sell.<sup>42</sup> So to add to the damage caused by marijuana prohibition, we must add the millions of people who have been arrested simply for use or possession, arrests that occur at staggeringly disproportionate rates for people of color.<sup>43</sup>

#### IV. CRIMINALIZING A PERSON IS MORE HARMFUL TO THAT PERSON THAN MARIJUANA.

Presumably the justification for arresting, fining, criminalizing, and forcing a marijuana user into treatment is that individuals need the government to protect them from themselves, from the harms of their choice to consume marijuana. However, the harm caused to the individual by being criminalized is worse than the potential harm caused by marijuana.

It is important that we focus on the harms of *criminalization* rather than just *incarceration* because the damage of criminalization extends far beyond the time a person may or may not spend in jail.

Collateral sanctions triggered by a marijuana conviction can include: revocation or loss of professional licenses, barriers to employment, bars from public housing, loss of educational aid, driver's license suspension, bars on adoption, loss of the ability to participate in jury service, and deportation.<sup>44</sup> Veterans may lose health care and other

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<sup>37</sup> MICHAEL POLLAN, *THE BOTANY OF DESIRE: A PLANT'S-EYE VIEW OF THE WORLD* (2002).

<sup>38</sup> Evan Mills, *The Carbon Footprint of Indoor Cannabis Production*, 46 ENERGY POL'Y 58 (2011), <http://evanmills.lbl.gov/pubs/pdf/cannabis-carbon-footprint.pdf>.

<sup>39</sup> Stephen Rolles, *An Alternative to the War on Drugs*, 341 BMJ 127 (2010).

<sup>40</sup> Mark Thornton, *Cato Institute Policy Analysis No. 157: Alcohol Prohibition Was a Failure*, POL'Y ANALYSIS (July 17, 1991), <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa157.pdf>.

<sup>41</sup> See National Prohibition Act ("Volstead Act"), Pub. L. No. 66-66, 41 Stat. 305 (1919).

<sup>42</sup> *Id.*

<sup>43</sup> AM. C.L. UNION, *supra* note 25, at 20.

<sup>44</sup> *Id.*

military benefits.<sup>45</sup> Sanctions can even include the loss of the ability to participate in our democracy and to vote.<sup>46</sup>

Even a small fine for a person who cannot pay it can quickly escalate into a larger fine, then a warrant, and then the person is swept into the criminal justice system.<sup>47</sup> And while there is a perception that no one goes to jail for marijuana—and within some communities that is certainly true—incarceration does happen. In Arizona, where a legalization initiative failed in 2016, possession of any amount of marijuana—even a tiny amount for personal use—is a felony carrying up to two years in prison.<sup>48</sup> Bernard Noble was sentenced to 13.5 years for the equivalent of two joints worth of marijuana under Louisiana’s habitual offender law—he is a habitual offender because he has possessed drugs for his own personal use more than once.<sup>49</sup>

All of these consequences are more damaging than using marijuana. If you are one of the fewer than 10% of marijuana users who suffers from a marijuana use disorder,<sup>50</sup> what is needed is accessible treatment, not to be criminalized and punished. Loss of your job or your housing or health insurance or your ability to vote will not help reduce your dependence on marijuana.<sup>51</sup>

As former United States Surgeon General Joycelyn Elders recently said: “Because of marijuana, we have become the world’s biggest jailer. We have criminalized a generation of young people for nothing, and the less educated and poor.”<sup>52</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See, e.g., *Paying More for Being Poor: Bias and Disparity in California's Traffic Court System*, LAWYERS’ COMM. FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA (2017), <https://www.lccr.com/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf>.

<sup>48</sup> ARIZ. REV. STAT. ANN. § 13-3405 (2010).

<sup>49</sup> See *State v. Noble*, No. 2013-KA-1109 (La. Ct. App. Feb. 12, 2014).

<sup>50</sup> See, e.g., Alan Budney et al., *Marijuana Dependence and Its Treatment*, 4 ADDICTION SCI. & CLINICAL PRACTICE 4 (2007).

<sup>51</sup> MAIA SZALVITZ, UNBROKEN BRAIN 180–90 (2016).

<sup>52</sup> Rose Lichter-Marck, *Dr. Joycelyn Elders: Health Care Is a Human-Rights Issue*, LENNY LETTER (Oct. 27, 2017), <http://www.lennyletter.com/politics/interviews/a1041/dr-joycelyn-elders-health-care-is-a-human-rights-issue/>.

## V. CRIMINALIZATION OF MARIJUANA IS BAD FOR PUBLIC HEALTH.

The complete prohibition of marijuana at the federal level and its Schedule I status has impeded research into the medicinal benefits of marijuana.<sup>53</sup> This has harmed us all as many of us—and our families—could benefit from medicine derived from cannabis had the federal government allowed such research and development of medicine to move forward over the past fifty years.

Additionally, marijuana is safer than many legal substances including alcohol and tobacco.<sup>54</sup> According to the Institute of Medicine of the National Academy of Science, thirty-two percent of people who try tobacco become dependent, whereas fifteen percent who try alcohol and only nine percent who try marijuana become dependent.<sup>55</sup>

There is no medically documented fatal overdose death for marijuana.<sup>56</sup> This, of course, is not true for alcohol and many other substances.<sup>57</sup> You surely can have a bad night, but you cannot die from marijuana alone.

For generations the government has grossly exaggerated the dangers of marijuana when in fact there are far less health-related costs associated with marijuana use than with alcohol use, and alcohol use has a much greater association with violent and aggressive behavior.

The solution is not to criminalize alcohol use. We tried that already and it was a colossal failure—just like the criminalization of marijuana is today. However, it is not good public policy to make a less harmful drug illegal and thus drive people to make a potentially more harmful choice.

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<sup>53</sup> John Hudack & Grace Wallack, *Ending the U.S. Government's War on Medical Marijuana Research*, BROOKINGS (Oct. 20, 2015), <https://www.brookings.edu/research/ending-the-u-s-governments-war-on-medical-marijuana-research/>.

<sup>54</sup> David Nutt et al., *Drug Harms in the UK: A Multicriteria Decision Analysis*, 376 LANCET 1558, 1561–63 (2010).

<sup>55</sup> James C. Anthony et al., *Comparative Epidemiology of Dependence on Tobacco, Alcohol, Controlled Substances, and Inhalants: Basic Findings From the National Comorbidity Survey*, 2 EXPERIMENTAL & CLINICAL PSYCHOPHARMACOLOGY 244, 251 (1994).

<sup>56</sup> DRUG ENF'T ADMIN., DRUG FACT SHEET, MARIJUANA (n.d.), [https://www.dea.gov/druginfo/drug\\_data\\_sheets/Marijuana.pdf](https://www.dea.gov/druginfo/drug_data_sheets/Marijuana.pdf).

<sup>57</sup> See U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, DRUG OVERDOSE DEATH RATES IN THE UNITED STATES, 1999-2015 (Feb. 2017), <https://www.cdc.gov/nchs/data/databriefs/db273.pdf>.

If we care about health and not just punishment, we need to look at how our public policy choices around marijuana relates to the use of other substances. We are also in the middle of a true crisis in the country resulting from opioid related overdoses. The number of fatal overdoses in the United States last year was over 64,000—more deaths than from gun violence, car crashes, or HIV/AIDS during that epidemic’s peak.<sup>58</sup>

States that have legalized marijuana for medicinal use to treat pain have greatly reduced rates of opioid overdose.<sup>59</sup> There are multiple studies showing that patients are using marijuana to reduce their overall use of opioid pain medications.<sup>60</sup> There is also emerging scientific evidence indicating that marijuana can serve as a pathway away from dependency of more dangerous substances, including prescription drugs, heroin, and alcohol.<sup>61</sup>

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<sup>58</sup> See NAT’L INST. ON DRUG ABUSE, OVERDOSE DEATH RATES (Sept. 2017), <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.

<sup>59</sup> Marcus A. Bachhuber et al., *Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010*, 174 JAMA INTERNAL MED. 1668 (2014); Melvin D. Livingston et al., *Recreational Cannabis Legalization and Opioid-Related Deaths in Colorado, 2000-2015*, 107 AM. J. OF PUB. HEALTH 1827 (2017); Philippe Lucas, *Rationale for Cannabis-Based Interventions in the Opioid Overdose Crisis*, 14 HARM REDUCTION J. 1 (2017); David Powell et al., *Do Medical Marijuana Laws Reduce Addictions and Deaths Related to Pain Killers?* (Nat’l Bureau of Econ. Research, Working Paper No. 21345, 2015), <http://www.nber.org/papers/w21345.pdf>; Yuyan Shi, *Medical Marijuana Policies and Hospitalizations Related to Marijuana and Opioid Pain Reliever*, 173 DRUG & ALCOHOL DEPENDENCE 144 (2017); Rhet A. Smith, *The Effects of Medical Marijuana Dispensaries on Adverse Opioid Outcomes*, SOC. SCI. RESEARCH NETWORK (Aug. 3, 2017), <https://papers.ssrn.com/abstract=3012381>.

<sup>60</sup> Philippe Lucas & Zach Walsh, *Medical Cannabis Access, Use, and Substitution for Prescription Opioids and Other Substances: A Survey of Authorized Medical Cannabis Patients*, 42 INT’L J. OF DRUG POL’Y 30, 30–35 (2017); Philippe Lucas et al., *Cannabis as a Substitute for Alcohol and Other Drugs: A Dispensary-Based Survey of Substitution Effect in Canadian Medical Cannabis Patients*, 21 ADDICTION RES. & THEORY 435, 435–42 (2012); Brian J. Piper et al., *Substitution of Medical Cannabis for Pharmaceutical Agents for Pain, Anxiety, and Sleep*, 31 J. OF PSYCHOPHARMACOLOGY 569, 569–75 (2017); Amanda Reiman, *Cannabis as a Substitute for Alcohol and Other Drugs*, 6 HARM REDUCTION J. 35 (2009); Sarah S. Stith et al., *Effects of Legal Access to Cannabis on Schedule II-V Drug Prescriptions*, 19 J. AM. MED. DIRS. ASS’N 59, 59–64 (2018).

<sup>61</sup> Douglas Bruce et al., *Preferences for Medical Marijuana over Prescription Medications Among Persons Living with Chronic Conditions: Alternative, Complementary, and Tapering Uses*, 24 J. ALTERNATIVE & COMPLEMENTARY MED. 149–52 (2017), <http://online.liebertpub.com/doi/10.1089/acm.2017.0184>; Lucas & Walsh, *supra* note 60; Lucas et al., *supra* note 60, at 435–42; Piper et al, *supra* note 60; Reiman, *supra* note 60; Stith et al., *supra* note 60.

A study released this month in the *American Journal of Public Health* examined the association between Colorado's legalization of recreational cannabis and opioid related deaths from 2000 to 2015. It concluded that legalization of cannabis in Colorado was associated with a reduction in opioid-related deaths.<sup>62</sup>

One large opioid pharmaceutical company (Insys Therapeutics) donated half a million dollars in 2016 to oppose legalization in Arizona, where possession of any amount of marijuana for your own personal use is a felony.<sup>63</sup> It recognized that increased access to marijuana means decreased use of opioids. There are powerful money interests in maintaining marijuana prohibition.

In the face of over sixty thousand deaths per year, prohibiting access to marijuana by pain patients is exacerbating a public health crisis. Marijuana should be embraced as an opioid alternative with the promise of reducing opioid overdose deaths and dependence.

Approximately ninety percent of marijuana users will never experience marijuana use disorder.<sup>64</sup> By criminalizing all marijuana users we waste valuable and very limited treatment resources. Diversion programs and drug courts that allow you to clear your records if you successfully complete drug treatment capture thousands and thousands of people who do not need treatment, but who are caught and do not want a criminal record. It is the equivalent of arresting, fining, and forcing into treatment for alcoholism everyone who enjoys a glass of wine at dinner or a beer on the weekend with friends.

Let us save the limited treatment resources we have for the people with substance use disorders and leave adults who choose to responsibly consume marijuana alone.

## VI. CRIMINALIZATION MAKES CONTROL IMPOSSIBLE.

Even under a complete decriminalization model—if use and possession were both legal—it is dangerous to leave the production and distribution of marijuana illegal. Prohibition is the ultimate lack of control. Under alcohol prohibition, it was never illegal to use and

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<sup>62</sup> Livingston et al., *supra* note 59.

<sup>63</sup> See Christopher Ingraham, *A Maker of Deadly Painkillers is Bankrolling the Opposition to Legal Marijuana in Arizona*, WASH. POST: WONKBLOG (Sept. 9, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/09/09/a-maker-of-deadly-painkillers-is-bankrolling-the-opposition-to-legal-marijuana-in-arizona>.

<sup>64</sup> Budney et al., *supra* note 50.

possess alcohol.<sup>65</sup> Only its production and distribution were illegal which had disastrous effects on society.<sup>66</sup> Alcohol became increasingly dangerous to consume. People were poisoned.<sup>67</sup> There was violence and corruption.<sup>68</sup> Organized crime grew and profited.<sup>69</sup>

The same is true with marijuana. Tens of thousands of people regularly consume marijuana.<sup>70</sup> The past fifty years of drug policy in this country have demonstrated that we cannot criminalize people out of using. We are left with widespread consumption through an unregulated and uncontrolled market.

Prohibition guarantees that marijuana cannot be inspected for purity or potency. There is no way to protect against dangerous pesticides, contaminants, molds, bacteria, or even the lacing of marijuana. There are no safety regulations. No testing. People have no idea what they are consuming. Under regulation, producers and sellers must comply with rules related to health and safety, security, and zoning. Everyone benefits when the food and substances that we consume are regulated.

Additionally, unlike licensed businesses in Colorado and Washington, illicit marijuana sellers operate virtually anywhere and have no incentive not to sell to minors. In states that have legalized marijuana, it is strictly regulated.<sup>71</sup> Marijuana is sold in marijuana-only stores that bar access to people under twenty-one. Unlike alcohol or tobacco, minors are not allowed to even enter stores where marijuana is sold. Consumption of marijuana in public is completely prohibited. In an unregulated market, there are few restrictions on minors' access to marijuana.

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<sup>65</sup> Thornton, *supra* note 40.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., RESULTS FROM THE 2016 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES, Table 1.6A, <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.htm#>.

<sup>71</sup> Alaska, Ballot Measure 2 (2014); California, Control, Regulate, and Tax Adult Use of Marijuana Act (Proposition 64); Colorado, Amendment 64 (2012); Maine, Question 1 (2016); Massachusetts, Question 4 (2016); Nevada, Question (2016); Oregon, Measure 91 (2014); Washington, Initiative 502 (2012); Washington, D. C., Initiative 71 (2014).

California has been incredibly successful in reducing tobacco use by minors through regulation and control of a legal product.<sup>72</sup> We are better at discouraging bad choices through taxation—as we raise revenue—than through criminalization—as we spend limited law enforcement resources.

#### VII. CRIMINALIZATION IS DANGEROUS FOR WORKERS.

A completely unregulated industry is also problematic and dangerous for workers. There is the potential with legalization for thousands of well paid, full-time jobs. In an illegal market, these jobs are forced underground where employees are denied basic labor protections.

People who are injured on the job are out of luck. People whose wages are stolen or who are not paid are out of luck. People who are sexually assaulted while working on marijuana farms can be too scared to report the assault, because of the nature of their employment.<sup>73</sup> A person who is injured on the job has no recourse with the police or employer because she was participating in a drug conspiracy in violation of federal law and could herself be criminally liable.

This is why the major labor unions support legalization.<sup>74</sup>

#### VIII. CRIMINALIZATION IS TERRIBLE FOR THE ENVIRONMENT.

Criminalizing marijuana production and leaving it completely unregulated and uncontrolled is also devastating for the environment. This has been true in California, where the industry was unregulated until 2016, when Proposition 64 passed.

The Emerald Triangle—Humboldt, Mendocino, and Trinity Counties—makes up the biggest cannabis-producing region in the

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<sup>72</sup> See CALIFORNIA DEP'T OF PUB. HEALTH, CALIFORNIA TOBACCO FACTS AND FIGURES (Oct. 2016), <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>; J.P. Pierce, M.M. White, & E. A. Gilpin, *Adolescent Smoking Decline During California's Tobacco Control Programme*, 14 TOBACCO CONTROL 207, 211 (2005).

<sup>73</sup> Shoshana Walter, *In Secretive Marijuana Industry, Whispers of Abuse and Trafficking*, REVEAL (Sept. 2016), <https://www.revealnews.org/article/in-secretive-marijuana-industry-whispers-of-abuse-and-trafficking/>.

<sup>74</sup> See Molly Redden, *Unions Have High Hopes for Weed Workers*, NEW REPUBLIC (Feb. 4, 2013), <https://newrepublic.com/article/112323/marijuana-legalization-draws-unions-and-doj-too>.



world.<sup>75</sup> Properties are remote and isolated, and often close to rivers and springs. There are many trespass grows on public and private lands. Lands protected for conservation are targeted for illegal grows. Damage to land and water, leveling hilltops, clearing of forests and native vegetation, unregulated construction, destroying and polluting streams, poisoning and killing of wildlife, and the dumping trash, pesticides, and fertilizers is well-documented.<sup>76</sup>

All of this is the result of a completely unregulated industry. The parallel example of grape growing demonstrates the benefits of a different public policy approach based in regulation. Grapes are not illegally grown in state parks, destroying streams and animal habitats and protected by armed traffickers. This is because we regulate and control winemakers and allow for the safe and responsible production of their product. Instead of our public lands being taken over and destroyed by illegal and sometimes violent actors, California has a thriving wine and tourist industry.

Proposition 64, the ballot initiative that voters enacted in 2016 that legalized marijuana in California, contained strict environmental regulations. It also provided that a portion of the tax revenue raised through legal marijuana sales be used to protect the environment and to remediate harm done to land as a result of past illegal marijuana cultivation. This is why a broad group of environmental and conservation organizations supported legalizing marijuana in California.

**IX. CRIMINALIZING MARIJUANA IS AN IMMENSE WASTE OF PUBLIC RESOURCES, WHILE MARIJUANA TAXATION BRINGS IN MUCH NEEDED REVENUE.**

Over the past twenty years, police departments in the United States have made over ten million arrests for marijuana possession alone—an average of seven hundred thousand per year.<sup>77</sup> Enforcing marijuana laws costs an estimated \$3.6 billion per year.<sup>78</sup> Under a

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<sup>75</sup> See *Environmental Impacts of Illegal Marijuana Cultivation*, 6.1 CONSERVATION FRONTIERS 2 (Jan. 2017), [https://www.calandtrusts.org/wp-content/uploads/2014/03/CCLT\\_Frontiers6.1.2017\\_final.pdf](https://www.calandtrusts.org/wp-content/uploads/2014/03/CCLT_Frontiers6.1.2017_final.pdf).

<sup>76</sup> *Id.*

<sup>77</sup> *Total Annual Arrests in the US by Year and Type of Offense*, DRUG WAR FACTS, <http://www.drugwarfacts.org/node/235> (last visited Apr. 13, 2018) (compiling Federal Bureau of Investigation's Uniform Crime Report data).

<sup>78</sup> AM. C.L. UNION, *supra* note 25 at 4.

system of criminalization, all revenue and profit stays in the illicit market.

The Congressional Research Service projects that replacing criminalization with a system of taxation and regulation would yield a potential \$6.8 billion in excise taxes.<sup>79</sup> The California Legislative Analyst's Office estimates that California's legalization law will raise one billion dollars per year in tax revenue.<sup>80</sup> Tax revenue collected by Colorado between 2014 and 2017, since the state legalized marijuana in 2012, was over six hundred million dollars.<sup>81</sup> This money goes to schools, substance use disorder treatment and prevention, and public safety.<sup>82</sup>

Additionally, the federal government also prohibits the cultivation of industrial hemp, a non-psychoactive form of the cannabis plant harvested for its high protein seeds, fibers, and other products.<sup>83</sup> Federal law denies American farmers the opportunity to grow hemp even though it is grown as a crop all over the world outside the United States.<sup>84</sup> Instead, American consumers import millions of dollars of hemp products each year made from hemp cultivated outside the United States.<sup>85</sup>

#### **X. DATA FROM STATES THAT HAVE LEGALIZED MARIJUANA SHOW THAT LEGALIZATION IS GOOD PUBLIC POLICY.**

Evidence shows that legalization is working. On November 6, 2012, Colorado and Washington became the first two jurisdictions in the world to legalize marijuana. In 2014, Alaska, Oregon, and Washington,

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<sup>79</sup> JANE G. GRAVELLE & SEAN LOWRY, CONG. RESEARCH SERV., R43785, FEDERAL PROPOSALS TO TAX MARIJUANA: AN ECONOMIC ANALYSIS (2014).

<sup>80</sup> CALIFORNIA LEGISLATIVE ANALYST'S OFFICE, PROPOSITION 64: MARIJUANA LEGALIZATION. INITIATIVE STATUTE. (2016), <http://www.lao.ca.gov/BallotAnalysis/Proposition?number=64&year=2016>.

<sup>81</sup> COLORADO DEP'T OF REVENUE, MARIJUANA TAX DATA: MARIJUANA TAXES, LICENSE, AND FEE REVENUE (2018), <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

<sup>82</sup> COLORADO DEP'T OF EDUC., MARIJUANA TAX REVENUE AND EDUCATION FAQ (2018), <https://www.cde.state.co.us/communications/20170919mjqanda>.

<sup>83</sup> Nicole M. Keller, *The Legalization of Industrial Hemp and What it Could Mean for Indiana's Biofuel Industry*, 23 IND. INT'L & COMP. L. REV. 555 (2013); *Hemp*, THE FREE DICTIONARY, <https://www.thefreedictionary.com/hemp> (last visited Mar. 22, 2018); RENÉE JOHNSON, CONG. RESEARCH SERV., RL32725, HEMP AS AN AGRICULTURAL COMMODITY (2017).

<sup>84</sup> See JOHNSON, CONG. RESEARCH SERV., *supra* note 83.

<sup>85</sup> *Id.*

D.C., approved similar measures. And in 2016, California, Massachusetts, Maine, and Nevada followed suit.<sup>86</sup> In January 2018, Vermont became the first state to legalize marijuana through the state legislature rather than voter referendum.<sup>87</sup> The data demonstrates that these states are succeeding at saving money and resources and are better protecting the public through legal regulation of marijuana.<sup>88</sup>

Arrests for marijuana possession, cultivation, and distribution of marijuana have dropped significantly in the states that have legalized marijuana, resulting in preventing the criminalization of thousands of people and saving scarce public safety resources. The total number of low-level marijuana court filings in Washington fell by 98% between 2011 and 2015.<sup>89</sup> The total number of marijuana-related court filings in Colorado declined by 81% between 2012 and 2015, and marijuana possession charges dropped 88%.<sup>90</sup> In Oregon, the number of marijuana arrests declined by 96% from 2013 to 2016.<sup>91</sup> In Alaska, the number of

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<sup>86</sup> Colorado (Measure 64), Washington (Initiative 502), and Washington, D.C. (Initiative 71) on November 6, 2012; Alaska (Measure 2) and Oregon (Measure 91) on November 4, 2014; and California (Proposition 64), Maine (Question 1), Massachusetts (Question 4), and Nevada (Question 2) on November 8, 2016.

<sup>87</sup> H.511, 2018 Gen. Assemb., Reg. Sess. (Vt. 2018); Lucia Bragg, *Vermont Becomes the First State to Legalize marijuana by State Legislature*, *National Conference of State Legislatures*, NAT'L CONF. OF STATE LEGIS. BLOG (Jan. 23, 2018), <http://www.ncsl.org/blog/2018/01/23/vermont-becomes-first-to-legalize-marijuana-by-state-legislature.aspx>

<sup>88</sup> See Appendix C, DRUG POL'Y ALL., FROM PROHIBITION TO PROGRESS: A STATUS REPORT ON MARIJUANA LEGALIZATION—WHAT WE KNOW ABOUT MARIJUANA LEGALIZATION IN EIGHT STATES AND WASHINGTON, D.C. (Jan. 2018).

<sup>89</sup> *Court Filings for Adult Marijuana Possession Plummet*, ACLU OF WASH. STATE (Mar. 19, 2014), <https://aclu-wa.org/news/court-filings-adult-marijuana-possession-plummet>.

<sup>90</sup> COLORADO DEP'T OF PUB. SAFETY, MARIJUANA LEGALIZATION IN COLORADO: EARLY FINDINGS (2016), <http://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf>.

<sup>91</sup> STATE OF OREGON REPORT OF CRIMINAL OFFENSES AND ARRESTS 2012, OREGON UNIFORM CRIME REPORTING (July 2013), <http://www.oregon.gov/osp/CJIS/docs/2012/STATE%20OF%20OREGON%202012.pdf>; STATE OF OREGON REPORT OF CRIMINAL OFFENSES AND ARRESTS 2013, OR. UNIFORM CRIME REPORTING (2014), <http://www.oregon.gov/osp/CJIS/docs/2013%20Annual%20Report%20-%20All%20sections.pdf>; STATE OF OREGON REPORT OF CRIMINAL OFFENSES AND ARRESTS 2014, OR. UNIFORM CRIME REPORTING (2015), <http://www.oregon.gov/osp/CJIS/docs/UCR%20Program/2014%20Annual%20Report%20-%20All%20sections-11-05-15.pdf>; STATE OF OREGON REPORT OF CRIMINAL OFFENSES AND ARRESTS 2015, OR. UNIFORM CRIME REPORTING (2016), <http://www.oregon.gov/osp/CJIS/docs/UCR%20Program/2015%20Annual%20Report/2015%20Annual%20Report%20-%20All%20sections-09-08-16.pdf>; STATE OF OREGON

marijuana arrests for possession and sales/manufacturing declined by 93% from 2013 to 2015.<sup>92</sup> Instead of arresting people, these states are now creating jobs. The legal marijuana industry now employs approximately two hundred thousand workers.<sup>93</sup>

At the same time, legalization has not led to increased youth use rates.<sup>94</sup> Marijuana use by youth in states where marijuana is legal has remained stable or declined.<sup>95</sup> In Washington, Colorado and Alaska, where the most comprehensive data is available, rates of marijuana use among high school students largely resemble national rates.<sup>96</sup>

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REPORT OF CRIMINAL OFFENSES AND ARRESTS 2016 ANNUAL REPORT, OR. UNIFORM CRIME REPORTING (2017), <http://www.oregon.gov/osp/CJIS/docs/2016%20Annual%20Report/2016AnnualReport.pdf>.

<sup>92</sup> See DRUG POL'Y ALL., FROM PROHIBITION TO PROGRESS, *supra* note 88.

<sup>93</sup> Eli McVey, *Chart: Cannabis Industry Employs 165,000 Plus Workers*, MARIJUANA BUS. DAILY (June 26, 2017), <https://mjbizdaily.com/chart-cannabis-industry-employs-165000-plus-workers/>; THE ECONOMIC IMPACT OF MARIJUANA LEGALIZATION IN COLORADO, MARIJUANA POL'Y GRP. (Oct. 2016), <http://www.mjpolicygroup.com/pubs/MPG%20Impact%20of%20Marijuana%20on%20Colorado-Final.pdf>; Christopher Ingraham, *The Marijuana Industry Created More Than 18,000 New Jobs in Colorado Last Year*, WASH. POST (Oct. 27, 2016), [https://www.washingtonpost.com/news/wonk/wp/2016/10/27/the-marijuana-industry-created-over-18000-new-jobs-in-colorado-last-year/?utm\\_term=.0ef866486e7a](https://www.washingtonpost.com/news/wonk/wp/2016/10/27/the-marijuana-industry-created-over-18000-new-jobs-in-colorado-last-year/?utm_term=.0ef866486e7a).

<sup>94</sup> DRUG POL'Y ALL., FROM PROHIBITION TO PROGRESS, *supra* note 88, at 8–14.

<sup>95</sup> See *id.*; Angela Dills et al., *Dose of Reality: The Effect of State Marijuana Legalizations*, CATO INST. (Sept. 16, 2016), <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa799.pdf>.

<sup>96</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEILLANCE – UNITED STATES, 2015, MORBIDITY AND MORTALITY WEEKLY REPORT, 65 SURVEILLANCE SUMMARIES VOLUME 1, 21–22 (June 10, 2016), [https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2015/ss6506\\_updated.pdf](https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2015/ss6506_updated.pdf); HEALTHY YOUTH SURVEY 2016 ANALYTIC REPORT, WASHINGTON STATE DEP'T OF SOC. AND HEALTH SERVS., DEP'T OF HEALTH, OFFICE OF THE SUPERINTENDENT OF PUB. INSTRUCTION, AND LIQUOR AND CANNABIS BD. (June 2017), <http://www.askhys.net/Docs/HYS%202016%20Analytic%20Report%20Final%2010-24-17.pdf>; DATA BRIEF: SUBSTANCE USE OVERVIEW, WASHINGTON STATE DEP'T OF SOC. AND HEALTH SERVS., DEP'T OF HEALTH, OFFICE OF THE SUPERINTENDENT OF PUB. INSTRUCTION, AND LIQUOR AND CANNABIS BD. (2017), <https://www.doh.wa.gov/Portals/1/Documents/8350/160-NonDOH-DB-SU-Overview.pdf>; HEALTHY KIDS COLORADO SURVEY, COLORADO DEP'T OF PUB. HEALTH & ENV'T (2017), <https://www.colorado.gov/pacific/cdphe/hkcs>; Scott B. Harpin et al., *Adolescent Marijuana Use and Perceived Ease of Access Before and After Recreational Marijuana Implementation in Colorado*, SUBSTANCE USE & MISUSE (Aug. 17, 2017); 2017 ALASKA YOUTH RISK BEHAVIOR SURVEY RESULTS, ALASKA DEP'T OF HEALTH AND SOC. SERVS., DIV. OF PUB. HEALTH,

Additionally, five years after adopting legalization, arrests for driving under the influence of alcohol and other drugs have declined in Washington and Colorado.<sup>97</sup> Additionally, crash rates in both states remain similar to crash rates in comparable states where marijuana remains criminalized.<sup>98</sup>

Emerging research indicates that legalization of marijuana is associated with reductions in opioid overdose deaths and untreated opioid use disorder.<sup>99</sup> In states with medical marijuana access, overdose death rates are almost twenty-five percent lower than in states with no legal access to marijuana, and the reductions in overdose death rates strengthened over time.<sup>100</sup> Legal access to medical marijuana has been associated with a twenty-three percent reduction in opioid dependence or abuse-related hospitalizations and fifteen percent fewer opioid treatment admissions.<sup>101</sup> An analysis of opioid overdose deaths in Colorado found that there was a post-legalization reduction of 0.7 deaths per month in the state and that the decades-long upward trend of overdoses trended downwards after 2014.<sup>102</sup>

Finally, these states are bringing in hundreds of millions of dollars in tax revenues that are funding important public policy priorities such as education, school construction, behavioral health, and alcohol and drug prevention and treatment.<sup>103</sup> Marijuana sales have generated almost six hundred million dollars for Colorado since legal sales began on January 1, 2014.<sup>104</sup> Sales in Washington generated \$315 million in tax revenues in the 2016 to 2017 fiscal year alone.<sup>105</sup> And by the end of

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<http://dhss.alaska.gov/dph/Chronic/Pages/yrbs/yrbsresults.aspx>; YOUTH RISK BEHAVIOR SURVEILLANCE SYSTEM, DATA FROM 1991–2015, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://nccd.cdc.gov/youthonline/App/Default.aspx>.

<sup>97</sup> DRUG POL'Y ALL., FROM PROHIBITION TO PROGRESS, *supra* note 88; Dills et al., *supra* note 95.

<sup>98</sup> Dills et al., *supra* note 95, at 18.

<sup>99</sup> Bachhuber et al., *supra* note 59, at 1668–73; Lucas, *supra* note 59; Powell et al., *supra* note 59; Smith, *supra* note 59.

<sup>100</sup> Bachhuber et al., *supra* note 59.

<sup>101</sup> Powell et al., *supra* note 59; Smith, *supra* note 59.

<sup>102</sup> Livingston et al., *supra* note 59.

<sup>103</sup> DRUG POL'Y ALL., FROM PROHIBITION TO PROGRESS, *supra* note 88.

<sup>104</sup> MARIJUANA TAX DATA, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

<sup>105</sup> MARIJUANA DASHBOARD, WASH. STATE LIQUOR & CANNABIS BD., <https://data.lcb.wa.gov/stories/s/WSLCB-Marijuana-Dashboard/hbnp-ia6v/>.

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the 2016 to 2017 fiscal year, Oregon collected seventy million dollars, more than double the predicted revenue.<sup>106</sup>

The results from legalization are so encouraging that some elected officials who originally opposed marijuana legalization at the time voters moved forward, now support the new approach. For example, Colorado's Governor John Hickenlooper, who was opposed the 2012 initiative in his state now says that legalization is working. He recently wrote to the Trump administration defending the law and asking the feds to not interfere because legalization has been good for the state.<sup>107</sup>

The sky is not falling.

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<sup>106</sup> MARIJUANA TAX STATISTICS, OR. DEP'T OF REVENUE, <http://www.oregon.gov/DOR/programs/gov-research/Pages/research-marijuana.aspx>; Noelle Crombie, *Oregon Pays Out \$85 Million in Pot Taxes to School Fund, Cops, Other Services*, THE OREGONIAN (Oct. 6, 2017), [http://www.oregonlive.com/marijuana/index.ssf/2017/10/oregon\\_pays\\_out\\_85\\_million\\_in\\_1.html](http://www.oregonlive.com/marijuana/index.ssf/2017/10/oregon_pays_out_85_million_in_1.html).

<sup>107</sup> Jeffrey Sessions, Letter to the Honorable John Hickenlooper, FOX31 Denver (July 14, 2017), <https://localtvkdvr.files.wordpress.com/2017/08/sessions-letter.pdf>.