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Office of the Attorney General

August 24, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

RE: National Cannabis Reform

Dear Speaker Pelosi, Majority Leader Schumer, Minority Leader McCarthy, and
Minority Leader McConnell:

As Colorado's chief legal officer, I am committed to the sound administration of our laws and the pursuit of justice and fairness. Since we were the first state to have a regulated retail market for cannabis, we have worked hard to develop a just, fair, and effective legal framework in this field, moving to a well-regulated market rather than pursuing a policy of prohibition. We are heartened to see movement in Congress to follow this model and create a federal framework to allow for state legalization efforts.

An initial step to promote a sound market for cannabis products, which Colorado and 34 State and Territorial attorneys general urged, is to enact the SAFE Banking Act, which would authorize cannabis companies to gain access to the banking system. We urge passage of this law as soon as possible. We also recognize the discussion around the Cannabis Administration and Opportunity Act ("CAOA") as a promising step around broader legalization measures. I submit this letter in response to requests for comments to that proposed law and request that the Congress engage with the states when designing a federal regulatory system that protects public health and safety.

Originating through state experimentation, cannabis legalization has ripened into a national issue. At present, 19 states,¹ the District of Columbia, Guam, and the Northern Mariana Islands, have all passed laws permitting adult and medical consumption of cannabis. Another 17 states permit cannabis for only medicinal use. These state reforms occurred primarily through voter-initiated ballot measures. In response, states designed and implemented robust regulatory programs, despite changing and conflicting federal guidance.²

The decriminalization and legalization of cannabis resulted in opportunities and challenges for governments, market participants, and the public. Consider, for example, how state and local governments adopted laws, regulations, and policies in a range of areas. Such actions include laws and policies to prevent criminal enterprises from exploiting the regulated market as a pretext for illegal activity, reduce youth access and mitigate public health risks, track cannabis from seed-to-sale, license and vet business operators, impose state and local taxes, and address social equity concerns (namely, ensuring that those adversely affected by criminal prosecutions for possessing and selling marijuana are able to benefit from its legalization). Through these experiences, states and state agencies developed a depth of knowledge about the complexities of transitioning to a regulated market. It is critical that any transition to a national market for cannabis rely on and take advantage of expertise of the states.

State-level laws and public policies on marijuana reflect a spirit of innovation, entrepreneurship, and an opportunity to rethink the impacts of drug policy. Three issues stand out.

- First, states that decriminalized or legalized cannabis no longer incarcerate individuals who pose no danger to society, reducing the impact on the criminal justice system. In response to the data showing comparable use rates but disparate law enforcement outcomes for communities of color,³ states developed programs that reinvest in communities and rectify harms.

¹ States with adult-use cannabis laws include: AK, AZ, CA, CO, CT, IL, MA, ME, MI, MT, NM, NV, NJ, NY, OR, SD*, VA, VT, and WA. *South Dakota's successful 2020 ballot measure is being challenged under the state's single-subject ballot measure law.

² See *Standing Akimbo, LLC v. United States*, No. 20-645, 2021 WL 2637846 (U.S. June 28, 2021) (In describing the current federal-state conflict over cannabis' legality, Justice Thomas noted "the contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary.").

³ See, e.g., *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, AMERICAN CIVIL LIBERTIES UNION, at 7 (April 20, 2020) (available [here](#)); *The War on Marijuana in Black and White*, AMERICAN CIVIL LIBERTIES UNION (June 2013) ([here](#)).

- Second, since 2014, when the first adult-use cannabis sales occurred, significant state and local tax revenue was generated from the sale of cannabis and cannabis derived products. This trend is expected to continue.⁴
- Finally, the transition from an illicit to a legal market creates an opportunity to better protect consumers through regulated channels of production. These policies are laudable and could be replicated at the federal level.

Despite the positive outcomes resulting from state’s decriminalization and legalization of cannabis, changes to state law have not resulted in the breadth or depth of scientific and peer-reviewed research necessary to fully understand the complexities of the cannabis plant and its effects on users. For example, more research is required on rates of poly-substance impaired driving,⁵ identification of necessary roadside enforcement resources, and development of robust public health and safety data collection systems. And states are grappling with how to prevent youth consumption of high potency products that may have long-term effects on the developing brain.⁶ Enhanced federal cooperation could resolve challenges, expand opportunities, and provide valuable oversight during a transition to interstate commerce.

As Congress proceeds with legislation to remove legal barriers to cannabis use and to design a federal regulatory framework, we urge the House and Senate to capitalize on long-standing principles of cooperative federalism.⁷ We appreciate the CAO’s efforts to preserve the integrity of state cannabis laws while simultaneously providing a path for responsible federal regulation of the cannabis industry. Given the states’ institutional knowledge, we encourage the adoption of a regulatory framework that designates the states as the primary regulatory authority. While the CAO contains elements of cooperative federalism, we strongly encourage Congress to more carefully consider the preemptive effects of any national regulations and the potential resulting disruption to state markets. Consider, for example, a possible 25%

⁴ For example, the New York state comptroller estimates cannabis excise tax revenue generation to increase from \$20 million in 2020-21, to \$115 million in 2022-23, \$158 million in 2023-2024 and \$245 million in 2024-2025. Office of the New York State Comptroller, *Review of the Enacted Budget*, at 5-6-- (April 2021) (available [here](#)).

⁵ See, e.g., Teft, B.C. & Arnold, L.S., *Cannabis Use Among Drivers in Fatal Crashes in Washington State Before and After Legalization* (2020) (available [here](#)); US Department of Transportation, National Highway Traffic Safety Administration, *Marijuana-Impaired Driving – A report to Congress*, DOT HS 812 440 (July 2017) (available [here](#)).

⁶ See e.g., Colorado Department of Public Health and Environment, *Healthy Kids Colorado Survey (HKCS) Data* (last visited March 29, 2021) (available [here](#)) (showing a decreasing in cannabis smoking among teens, but an increase in cannabis vaping and dabbing since 2015); Mitchell, T., *Polis signs bill adding new restrictions to medical marijuana*, WESTWORD (June 24, 2021) (available [here](#)).

⁷ For a discussion of the architecture of cooperative federalism regulatory regimes see Philip J. Weiser, *Towards a Constitutional Architecture for Cooperative Federalism*, 79 N.C. L. Rev. 663 (2001).

federal tax on cannabis. To be sure, such a tax would not technically preempt a state's taxing ability, but it would pressure states to consider cutting their tax rates. Any such cuts would in turn reduce the revenue states currently rely on to implement various social equity and education programs related to cannabis. Consequently, we encourage Congress to take time to consider how different measures would impact states and how federal programs can best be designed to work in tandem—not at cross-purposes—with state programs.

We also support the development of regulatory best practices across intrastate markets which can be valuable in providing guidance for interstate markets in manufacturing, testing, and marketing. With guidance from federal authorities and sponsored research, the federal government can work to protect consumers from misleading advertising or from health risks associated with dangerous additives or undisclosed risks of use. Similar structures exist in other heavily regulated industries, such as alcohol, tobacco, and health care. For example, national standards from the U.S. Food and Drug Administration (“FDA”) are needed for manufacturing, testing, and marketing to protect consumers from misleading advertising or harm to their health from dangerous additives or undisclosed risks of use. Furthermore, prudent regulation of lawful cannabis can and should include similar measures as those in place for the licensing and taxation of alcohol and tobacco. On that front, we are grateful for the CAO's jurisdictional provisions to the Alcohol Tobacco Tax and Trade Bureau (“TTB”) and FDA.

We also urge Congress to carefully consider the manner in which any future national regulation benefits large companies at the expense of small, locally owned businesses. If a national market is not rolled-out carefully and in stages, large companies, particularly existing tobacco-focused companies, will be able to move into new markets immediately, displacing and pushing out smaller players. Many cannabis companies are small and/or minority-owned; without phased implementation, we are concerned these businesses will be pushed out of the market thus diminishing the social equity principles behind any federal market rollout. In short, the federal regulatory framework will have considerable impact on state public policy goals—including equity and competition—and those impacts should be considered carefully and managed appropriately before a federal framework takes hold.

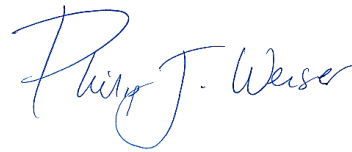
Given the unique forms in which cannabis is currently being manufactured, marketed, and sold to consumers within intrastate markets, including inhalable, ingestible, and topical forms, we also urge Congress to structure any future national regulatory system in a manner that is adaptable to a changing market, focuses on protecting consumers, and empowers states to play a central role.

A regulatory model that applies appropriate federal health and safety standards to protect consumers engaged in interstate commerce, while preserving the

states' role in the regulation and control of distribution outlets, will provide the strongest possible protections against known and unknown risks associated with legalization. Our model of cooperative federalism is flexible enough to respect the role of states to continue to experiment as laboratories of democracy while also safeguarding the federal government's interest in regulating a national marketplace.

Overall, while complexities remain regarding the implementation of a legal market for cannabis, our experience shows that decriminalization of cannabis produces positive benefits for society. As Congress proceeds with legislation in this field, we strongly urge the House and Senate to take advantage of the experience and expertise of states that led in marijuana legalization and decriminalization. State and territorial attorneys general—and our office in particular—are here to be a resource to Congress as it weighs options for a federal cannabis regulatory framework. We look forward to working with you as you consider this issue.

Sincerely,

A handwritten signature in blue ink that reads "Phil Weiser". The signature is written in a cursive, flowing style.

Phil Weiser
Attorney General