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*"We change laws."*

May 23, 2013

Re: Testimony to the House Judiciary Committee in support of HB 4271

Dear Chairman Cotter, Vice Chairs Kesto and Cavanagh, and members of the committee:

My name is Karen O'Keefe. I'm a Michigan native, an attorney, and the director of state policies at the Marijuana Policy Project, where I've worked for almost 10 years. I was also the lead drafter of the Michigan Medical Marijuana Act (MMMA), which was approved by 63% of voters — including a majority in each of the state's 83 counties — on November 4, 2008.

I am here to urge you to enact HB 4271, which would address something that the MMMA did not adequately provide for — patients' access to medical marijuana. When we drafted the MMMA, no state explicitly provided for the licensing and regulation of dispensaries. At the time, the federal government frequently raided operators in California, where the state's law allowed collectives, but where the state and most cities had not regulated dispensaries. As you know, at the time the choice was made not to include licensing or regulation of dispensaries in the MMMA. We hoped and expected that the MMMA would be added to in order to address this omission as other states' laws and federal policy evolved.

It has been six years since we drafted the MMMA, and the landscape has changed. Ten states and Washington, D.C. now explicitly allow for licensed, regulated dispensaries, and they have shown that this is a viable option that is vital to patients.<sup>1</sup> Other states' experiences have shown that well-regulated dispensaries can be valuable community members and need not attract federal attention. In those states with adequate licensing and regulations, the federal government has not targeted providers who were clearly complying with state law.

When discussing medical marijuana, concerns are frequently expressed about federal law. In our federalist system of government, however, it is state lawmakers — not U.S. Congress — who make Michigan law. States unquestionably have the

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<sup>1</sup> Those states are Arizona, Colorado, Connecticut, Delaware, New Jersey, New Mexico, Maine, Massachusetts, Rhode Island, and Vermont. Washington, D.C. also has a law regulating dispensaries. In addition, California allows "collectives" and "cooperatives," which cities may regulate.

right to remove their own criminal penalties from marijuana use — medical or otherwise. In two different cases in Arizona, the case was made that federal law preempted the state’s medical marijuana law, which included dispensaries. The District Court for Arizona dismissed the case finding that it was not ripe, including because Arizona’s complaint did not establish that state workers “are subject to a genuine threat of imminent prosecution.”<sup>2</sup> Arizona did not appeal; instead, it moved forward and issued dispensary certificates to 98 dispensaries, about 15 of which are now operational and have not seen any federal interference. In the other case, a state court ruled against an argument that issuing a certification to a dispensary was preempted by federal law, noting:

It is of considerable consequence that it is Arizona’s attempt at partial decriminalization with strict regulation that makes the AMMA vulnerable under the impossibility-preemption doctrine. This view, if successful, highjacks Arizona drug laws and obligates Arizonans to enforce federal prescriptions that categorically prohibit the use of all marijuana. The Tenth Amendment’s “anti-commandeering rule” prohibits Congress from charting that course.<sup>3</sup>

Not only is HB 4271 within Michigan’s authority to enact, it is also the right thing to do. There is no other medicine or food that state law requires its residents to grow on their own or to find an individual who is willing and able to do so for them. If my health depended on my green thumb, I’d be in serious trouble: I’ve accidentally killed two cactuses. When it comes to marijuana, it takes about four months from planting a seed to producing usable marijuana – and that’s if everything goes right. Imagine having to wait four months to fill other prescriptions.

I’ve worked with patients who have had to obtain their medicine on the streets. Some have been mugged or had guns pulled on them. Others have had bad reactions to contaminants included in street marijuana. It’s time to give patients a safer option.

HB 4271 takes a modest approach, allowing dispensaries only in those municipalities that choose to allow and regulate them. Several cities, including, Ypsilanti, Kalamazoo, and Ann Arbor, already have ordinances to allow city-regulated dispensaries. It is time to give clear legal protections to providers who are cooperating with local laws and to give patients access in those communities that wish to provide for dispensing.

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<sup>2</sup> *Arizona v. United States*, No. CV 11-1072-PHX-SRB, slip op. at 2 (D. Ariz. Jan. 1, 2012).

<sup>3</sup> *White Mountain Health Center, Inc. v. Maricopa County*, CV 2012-053585 (Arizona Superior Court, Maricopa County, 2012).

HB 4271 would also set up several statewide rules for dispensaries, including by prohibiting them from locating within 1,000 feet of schools, prohibiting the on-site consumption of marijuana, and requiring warning labels. It would also prohibit TV and radio ads for marijuana sales and allow the Department of Licensing and Regulatory Affairs to develop additional restrictions on advertising.

In addition to setting up rules and allowing local licensing and regulation, this bill should result in millions of dollars of annual revenue to the state. Michigan's 6% sales tax rate does not include an exemption for non-prescription medications. Because marijuana cannot be prescribed — and is instead recommended — due to federal law, sales taxes would be imposed on all sales from dispensaries. In Colorado, the state collected more than \$5.4 million in FY 2012 on sales taxes collected from medical marijuana dispensaries. Colorado's tax rate is less than half of Michigan's (it's 2.9%), and its number of patients is lower, too, since it has a much smaller population.<sup>4</sup> Therefore, it appears Michigan could generate \$10 million or more in medical marijuana sales tax.

In addition to being a compassionate and fiscally sound approach, HB 4271 is very simple for the state to implement. By leaving the regulation to those cities that have chosen to allow and regulate dispensaries, Michigan would not have to set up a new regulatory regime or expend its limited resources. No state worker would have to license or inspect dispensaries. Instead, cities could choose to do so. This is a very simple bill to reduce the heavy hand of the state government's criminal penalties and to allow localities to provide for the welfare of their seriously ill residents as they see fit.

Thank you for your time and careful consideration. Please don't hesitate to contact me with any questions.

Sincerely,



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<sup>4</sup> Colorado also only allows dispensaries in those localities that allow them.