

Testimony of

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On behalf of

SAM, Inc.

before the meeting of

**The House Financial Services Committee
Subcommittee on Financial Institution and Consumer Credit**

of the

United States House of Representatives

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Chairman Meeks and Ranking Member Luetkemeyer and members of the Subcommittee, thank you for the opportunity to testify on the “Secure And Fair Enforcement Banking Act of 2019” or the “SAFE Banking Act of 2019.”

My name is Jonathan Talcott, Chairman of Smart Approaches to Marijuana, Inc. (“SAM, Inc.”), a 501(c)(3), non-partisan organization co-founded by former Congressman Patrick J. Kennedy, Senior Editor of *The Atlantic* David Frum, and former Obama Administration Senior Drug Policy Advisor Kevin A. Sabet, PhD. The mission of SAM is to educate citizens on the science of marijuana and to promote health-first, smart policies and attitudes that decrease marijuana use and its consequences. I am also an attorney at Nelson Mullins Riley & Scarborough LLP where I am co-chairman of the Securities Practice Group and have worked with the community banking industry for thirty years. I previously served as a banking regulator in the Office of Thrift Supervision, as well as having worked for the

banking industry as a banker for J.P. Morgan & Company, Inc. I am here to speak on behalf of myself and on behalf of SAM, Inc., not on behalf of my law firm.

I am here to testify against the adoption of the SAFE Banking Act of 2019. Ironically, no name could be less appropriate for this legislation. Not only is the SAFE Banking Act of 2019 a smokescreen to hasten the legalization of marijuana, but without a change to the Controlled Substances Act (“CSA”), changes proposed by the legislation will not be effective and will have some unintended consequences. This bill should be opposed and marijuana should remain illegal. We believe no one should have the rest of their life ruined simply because they got caught with a joint, but there are ways to make needed changes to the criminal justice system without fully legalizing and commercializing marijuana. When it comes to researching new medicines derived from the marijuana plant, SAM is in strong support of reducing the barriers to legitimate research.

SAM, Inc. is funded by donations from individuals, concerned citizens, mothers and fathers, and sisters and brothers of people who have seen firsthand the problems caused by marijuana or who wish to educate the public about its dangers. In the last twenty-five years vast amounts of false information about marijuana have been spread across the United States in an effort to achieve legalization and, more importantly for the people involved, commercialization. I would note that I am the only non-government witness you will hear from today who is not paid to be here and who stands to make no money from this position.

The first issue with the proposed legislation is that it does not actually protect community banks or credit unions. Under the Money Laundering Control Act of 1986 (“MLCA”), banks are prohibited from providing financial services to businesses that are

engaged in illicit activities. These provisions are enforced, in part, through the Bank Secrecy Act (“BSA”). While the SAFE Act purports to provide a safe harbor under the MLCA and BSA to banks serving the marijuana industry, these proposals will have no practical effect because the use, possession and distribution of marijuana remains illegal at the federal level under the CSA.

The CSA was passed in 1970 and makes it unlawful to use or possess or distribute any controlled substance, except as authorized by the Act. In addition, abetting such activity is a federal crime. Marijuana is considered a Schedule I controlled substance and, as such, manufacturing, distributing, dispensing, or possessing marijuana is a criminal offence. The CSA is a federal law which generally preempts all state laws intended to govern the marijuana industry. As a result, all activity in the marijuana industry continues to remain illegal under federal law.

The MLCA prevents banks from engaging in financial transactions involving criminal proceeds. In particular, banks may be liable if they engage in activities involving proceeds of a “specified unlawful activity” with the “intent to promote the carrying on of such specified unlawful activity” among other things. Because cultivating, distributing and using marijuana are unlawful activities under the CSA, providing banking services to participants in the state-approved marijuana industry could result in liability under the MLCA.

MLCA requirements applicable to banks are set forth in the BSA and other related legislation. Under the BSA banks are required to monitor customers transactions and make various reports of suspicious activities.

Finally, through the Financial Crimes And Enforcement Network (“FinCEN”), the Bureau of the Department of Treasury administers and enforces the BSA and the Department of Justice (“DOJ”) may bring criminal actions against the banks under the BSA.

FinCEN has issued guidance for banks interested in providing services to the marijuana industry. Separately, the DOJ issued the Cole Memo which provides guidance to prosecutors about enforcement of federal law in connection with medical marijuana and other state-sanctioned marijuana-related activities.

While a thorough analysis of the laws affecting the marijuana industry and banks attempting to serve that industry is beyond the scope of this testimony, a few specific facts should be noted.

The Cole Memo, which has since been rescinded by Attorney General Jeff Sessions, is not controlling law. The FinCEN guidance does not protect financial institutions from criminal prosecution under the BSA and the MLCA addresses money laundering but does not address the question of criminal violations under the CSA.

The proposed SAFE Act attempts to provide a safe harbor for banks serving certain marijuana businesses. This safe harbor will aid banks only insofar as it permits them to assist the marijuana industry without fear of prosecution under the MLCA or fear becoming the subject of an enforcement action by FinCEN or other bank regulatory agencies. The Safe Act does nothing to address the illegal nature of all marijuana-related activities under the CSA or the threat of prosecution by the DOJ.

In addition, the SAFE Act would introduce existing criminal elements into the banking system. Contrary to the promises of legalization, the black market hasn't gone away in legalized states. Many unlicensed operators have store-fronts, delivery services, and even pay for Internet advertising. It is not far-fetched to think they would also apply for bank accounts were they given the opportunity.

In Oregon, 70% of transactionsⁱ were found to be on the black market several years after legalization, trafficked to 37 statesⁱⁱ. California pot growers admit to growing five to twelve times the amount of marijuana compared to what the whole state consumedⁱⁱⁱ. The rest was shipped out of state. These organized crime networks are not small enterprises^{iv}.

A detailed exposé on Rocky Mountain PBS revealed the growth of the black market in Colorado following legalization^v. Former Colorado Governor John Hickenlooper said, "We thought that the black market would disappear. Evidently it contracted and then began to expand again, and that's counter-intuitive, right? It is not what you would expect." Colorado's former U.S. attorney Bob Troyer, who was an Obama Administration appointee, observed, "The thing that nobody predicted [was that] normalization, commercialization, would be a magnet for international black market activity."

In California, Mexican drug cartels are propping up black market marijuana farms all across Northern California, devastating the environment by stealing water and contaminating large areas with pesticides that kill endangered wildlife and harm humans^{vi}. Earlier this week, California Governor Gavin Newsom said, "We're seeing a lot more cartel activity" and "the issue of environmental degradation persists."^{vii}

We should also watch closely to what's happening with our neighbor to the north. Access to banking in Canada has allowed offshore firms to invest^{viii}, some with ties to organized crime^{ix}. We shouldn't repeat Canada's mistake. Andrew Lelling, the US Attorney for Massachusetts, warns, "...marijuana trafficking whether done legally under state law or not can be a source of revenue for organized crime. It can be pursued illegally out of state and the drugs moved into state.^x"

In regard to public health and safety, the marijuana sold today in pot shops is orders of magnitude more potent than anything available at any point in history. Extracts that have been declared "legal" under state law can go up to 99% purity for the active ingredient THC, earning nicknames like "green crack," "wax," and "shatter." Even one of the most prominent voices to legalize marijuana in Colorado, Dr. Rav Ivker, now believes that these substances should be completely banned^{xi}. The Netherlands moved to classify anything over 15% THC as a hard drug^{xii}. This is not your daddy's Woodstock weed.

This new, high potency pot is having devastating effects on the mental health of our young people. Malcom Gladwell, the author of *Tipping Point*, recently penned a cover story for *The New Yorker* magazine, asking "Is Marijuana As Safe As We Think?" The answer was a resounding no. The National Academies of Science conducted a comprehensive review of thousands of studies of the effects of marijuana on the brain and came to the conclusion that there were significant links with serious mental illnesses, including psychosis, schizophrenia, and suicidal ideation. More frequent use was linked with stronger negative effects.^{xiii} That is why every major medical society has opposed the legalization of marijuana.^{xiv}

Based on the National Academies report and many newer studies, former New York Times reporter and best-selling author Alex Berensen wrote a critically important work called *Tell Your Children: The Link Between Marijuana, Mental Illness and Violence*. He has presented the data on which psychiatrists have been sounding the alarm to a popular audience, and you only need to look at the marijuana industry's overreaction to realize that he has touched a very sensitive nerve. Marijuana causes psychosis and psychosis causes violence; this is a simple equation. Statistically speaking, marijuana users are about six times more likely to become psychotic or have psychotic episodes.^{xv} The marijuana industry is sitting on a ticking time bomb of product liability, and they may soon face a reckoning that will make the Tobacco settlements look small by comparison.

From Tell Your Children^{xvi}:

“The first four states that legalized marijuana for recreational use (Alaska, Colorado, Oregon and Washington) have seen rates of murder and aggravated assault increase much faster than the United States rates as a whole since legalization. The gap has increased every year.” (152)

“Uruguay, the first country to legalize recreational marijuana sales, saw its murder rate increase sixty-four percent year-over-year from 2017 to 2018. This is not a coincidence.” (185)

Finally, contrary to assertions by the marijuana industry, marijuana legalization has a direct correlation with overdose deaths from opioids since 2005. The rate of people dying from opioid overdose in the United States and Canada where marijuana has slowly been

legalized have increased dramatically. In the United Kingdom, where marijuana use has been declining, the number of opioid deaths has been declining dramatically. Americans are dying from overdoses at a rate of three times that of the United Kingdom.^{xvii}

If all of this sounds disturbingly familiar, it's because in our recent history, we still remember the Big Tobacco executives testifying in a room similar to this: "Do you believe nicotine is not addictive?" One by one, they replied, "I believe nicotine is not addictive." "I believe nicotine is not addictive." "I believe nicotine is not addictive." I believe the scene would look very similar today if you lined up the top executives of the marijuana industry. Of course, you would now get some of those same tobacco executives showing up to testify with Altria's (formerly Philip Morris) investment of \$1.8 billion into the medical and recreational marijuana industry in Canada^{xviii}. That is what happens when you federally legalize marijuana. Surely you are not so naive to think that won't happen here? And I cannot neglect to mention that the CEO of Purdue Pharma, the very man who oversaw the rollout and deceptive marketing plan for OxyContin, left that company to lead a marijuana company.^{xix}

There is much more that could be said about the public health impact of the marijuana industry, when it comes to the doubling of roadway fatalities due to marijuana impairment in Colorado^{xx} and Washington State^{xxi}, the increased number of hospital emergency room visits from overdose and marijuana-induced psychosis^{xxii}, the increased number of teens and children hospitalized for accidental ingestion of a pot gummy^{xxiii} (which Washington State almost banned^{xxiv} until the industry promised to be better about regulating itself^{xxv}), and the rising impact to mental health. The public health costs of our legal drugs, alcohol and tobacco, are ten times the amount of revenue raised through taxes. A similar marijuana banking

amendment failed last year in the House Appropriations Committee, and one of the arguments against came from a Congressman in a legalized state: he wanted to know why he should give the marijuana industry this great benefit of access to capital markets and institutional investors when we aren't even collecting any revenue to cover the collateral costs of their product. Already in Colorado, a very limited set of short-term costs exceeds the amount of tax revenue by 4.5 times.^{xxvi} The long-term costs of increased marijuana use could eventually exceed those of tobacco and alcohol.

In conclusion, I urge you to reject this bill. The SAFE Act does not accomplish its intended purpose, and this is the wrong committee to have a debate over whether marijuana should be legal. If those who want to see marijuana legalized, commercialized, advertised, and promoted are successful in legalizing marijuana at the federal level, the SAFE Act is superfluous. If they are not, the SAFE Act is still superfluous. The people and businesses who deposit the proceeds from the sales of high potency marijuana, concentrates, and gummies will still be violating the Controlled Substances Act. That is no small matter, and it is very disturbing to me that those businesses would be willing to take that risk and overlook its implications in order to service an industry that is so harmful to public health.

The legislation as written would not have its intended effect. Most importantly, it is a backdoor means to accomplish full federal legalization. Full federal legalization is a tragedy that will bring in more drugged driving deaths, opioid use, and psychosis and violent crime. I ask that you not pass this UN-SAFE Banking Act.

Thank you.

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- ⁱ See <https://learnaboutsam.org/wp-content/uploads/2017/04/Oregon-State-Police-report-January-2017.pdf>
- ⁱⁱ See https://www.oregonlive.com/marijuana/2018/08/new_report_finds_rampant_pot_o.html
- ⁱⁱⁱ See <https://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-producing-pot-surplus-1501101923-htmlstory.html>
- ^{iv} See <https://www.latimes.com/local/lanow/la-me-ln-marijuana-bust-20181221-story.html>
- ^v See <http://www.rmpbs.org/blogs/news/how-colorado-became-a-major-exporter-of-illegal-marijuana/>
- ^{vi} See <https://www.newsweek.com/2018/01/19/mexican-drug-cartels-taking-over-california-legal-marijuana-775665.html>
- ^{vii} See <https://twitter.com/JeremyBWhite/status/1095081610435690496>
- ^{viii} See <https://translate.google.com/translate?hl=en&sl=auto&tl=en&u=http%3A%2F%2Fwww.journaldemontreal.com%2F2018%2F01%2F22%2Fles-paradis-fiscaux-financent-les-firmes-de-pot-canadiennes>
- ^{ix} See <https://www.cbc.ca/news/canada/montreal/cannabis-health-canada-enquete-investigation-1.4887997>
- ^x See <https://www.wgbh.org/news/politics/2018/07/30/us-attorney-andrew-elling-talks-marijuana-immigration-and-attorney-general-jeff-sessions>
- ^{xi} See <https://www.westword.com/news/famed-medical-marijuana-doctor-calls-for-making-concentrates-illegal-10476374>
- ^{xii} See <https://www.theguardian.com/world/2011/oct/07/netherlands-potency-cannabis-hard-drug>
- ^{xiii} See <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=24625>
- ^{xiv} See <https://learnaboutsam.org/the-issues/public-health-organizations-positions-on-medical-marijuana/>
- ^{xv} See <https://www.health.harvard.edu/blog/teens-who-smoke-pot-at-risk-for-later-schizophrenia-psychosis-201103071676>
- ^{xvi} Berensen, Alex. Tell Your Children: The Truth About Marijuana, Mental Illness, and Violence. Simon & Schuster. (2019)
- ^{xvii} *Ibid.* page 111
- ^{xviii} See <https://www.cnbc.com/2018/12/07/altria-to-invest-1point8-billion-in-cannabis-company-cronos-group.html>
- ^{xix} See <https://www.theglobeandmail.com/news/national/leadership-behind-canadian-medical-marijuana-company-has-an-oxycontin-past/article33200287/>
- ^{xx} See <https://learnaboutsam.org/sam-statement-denver-posts-new-stoned-driving-analysis/>
- ^{xxi} See <http://aaa.com/2016/05/fatal-road-crashes-involving-marijuana-double-state-legalizes-drug/>
- ^{xxii} <https://www.ctvnews.ca/health/colorado-experienced-a-sharp-spike-in-er-visits-after-legalizing-cannabis-doctor-1.4137154>
- ^{xxiii} See <https://www.reuters.com/article/us-health-marijuana-kids/marijuana-related-er-visits-by-colorado-teens-on-the-rise-idUSKBN1HO38A>
- ^{xxiv} See <https://kinja.com/api/profile/getsession?redirect=https%3A%2F%2Fthetakeout.com%2Fsession%3Fr%3Dhttps%253A%252F%252Fthetakeout.com%252Fwashington-state-ban-marijuana-candy-edibles-1829625086>
- ^{xxv} <https://www.seattletimes.com/seattle-news/marijuana/washington-cannabis-regulators-approve-new-edibles-rules-avoid-candy-ban/>
- ^{xxvi} See <http://www.ccu.edu/centennial/policy-briefs/marijuana-costs/>