



To: Chairman Mike Regan, Chairman James Brewster, and members of the Senate Law and Justice Committee

Re: Third Public Hearing on Adult-Use Marijuana

From: Bryan A. Murray, EVP Government Relations, Acreage Holdings

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Acreage Holdings ("Acreage"), is a vertically integrated, multi-state cannabis operator with a primary presence across nine (9) states. Acreage does business as Prime Wellness in Pennsylvania, operating a state-of-the-art cultivation center in Sinking Spring. The mission of Acreage is to champion and provide access to the beneficial properties of cannabis by creating the best quality products and consumer experiences.

Before beginning, I want to address a common objection by opponents of legalization: the “gateway drug theory” which says marijuana leads people to try harder more dangerous substances. While it’s true that cannabis, like alcohol or tobacco, can “prime” the brain for other substances, it is not true that cannabis causes a person to use other substances. As a matter of fact, data suggests that the majority of those who try cannabis *do not* go on to harder substances.<sup>1</sup> The gateway drug theory is another case of correlation without causality. Concluding a person’s addiction to illicit drugs is due to prior use of marijuana ignores the nuances of addiction. This selectivity by cannabis opponents is dangerously similar to that of Harry Anslinger during Nixon’s War on Drugs. It resulted in failed policies, stigmatization, and a legacy of injustice.<sup>2</sup>

As of this writing, forty-eight (48) states have legalized cannabis for medical or recreational use.<sup>3</sup> Americans overwhelmingly support cannabis legalization, with polls showing support remaining at nearly 70 percent.<sup>4</sup> In Pennsylvania, 60 percent of adults support adult-use cannabis.<sup>5</sup> What follows are Acreage’s considerations for regulatory authority, taxation, speed to market, social justice and equity, local control, and home grow.

## Regulatory Authority

Nearly every state legalizing recreational use of cannabis began with a medical cannabis program, regulated by an existing department, like the Department of Health. In Ohio, for example, the regulatory authority is shared between departments and is assigned by license type. When states transition to recreational use, this multi-agency regulatory approach creates substantial confusion for operators attempting to comply with regulations because conflicting messages come from the regulating agencies. In Pennsylvania, the Department of Health has

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<sup>1</sup> NIDA. 2021, May 24. Is marijuana a gateway drug?. Retrieved from <https://nida.nih.gov/publications/research-reports/marijuana/marijuana-gateway-drug> on 2022, March 8

<sup>2</sup> Bernstein, Austin and Turcott, Bruce. “Cannabis Law Deskbook.” Attorney General Alliance. Thompson Reuters. 2021-2022 Edition. 74-85.

<sup>3</sup> The 48 includes “low THC” states, such as Georgia Low THC Oil - FAQ for General Public | Georgia Department of Public Health and Tennessee, which allows certain individuals with epilepsy who possess cannabis oils that contain no more than 0.9% THC. The reason these states are included is that while the thresholds for THC are low, they exceed the .3% threshold for qualifying as hemp, and, thus, are marijuana under federal law (i.e., these states authorize the use of marijuana as defined in the CSA for medical purposes, despite imposing significant restrictions on use and THC amount).

<sup>4</sup> Source: <https://news.gallup.com/poll/356939/support-legal-marijuana-holds-record-high.aspx>. Retrieved March 4, 2022.

<sup>5</sup> Source: <https://elevate-holistics.com/pennsylvania-marijuana-legalization-updates-for-2021/>. Retrieved March 4, 2022.



encountered challenges in effectively regulating the medical cannabis program.<sup>6</sup> We urge Pennsylvania to consolidate the regulatory authority under a new agency, specifically created to regulate the medical and adult-use cannabis industry.

## **Taxation**

Tax revenue is one of the primary reasons states legalize cannabis. In 2020, states with at least a three-year-old legal adult-use cannabis market recognized a combined \$2.28 billion in tax revenue.<sup>7</sup> Most states impose a statewide sales tax, an excise tax,<sup>8</sup> and allow a (capped) municipal tax. These taxes are available to fund the administration and implementation costs of the regulatory program along with other state priorities. Often states become overzealous in their taxation of cannabis, assuming it is a cash cow. In reality, cannabis is a relatively small portion of any state's tax revenue, amounting to less than 1% of revenue for California, Nevada, Oregon, and Alaska. Therefore, legislators must focus taxation on building a sustainable industry with a vibrant ecosystem, not squeezing it for unrealistic revenue that jeopardizes its ability to thrive. Smart cannabis tax policy seeks to generate revenue while simultaneously encouraging participation in the newly created legal and regulated cannabis industry by localities, customers, operators, and ancillary services.

Another reason for a sensible cannabis tax policy is because cannabis consumers are sensitive to price and will return to the illicit market if the price of legal cannabis is greater than the illicit market.<sup>9</sup> States with revenue-only focused tax schemes experience the unintended consequences of price elasticity of demand, illicit operators avoiding the regulated market, and ultimately arresting the development of their cannabis industry. Overtaxing the cannabis industry is the paragon of being penny-wise and pound-foolish.

## **Speed to Market**

States with existing medical cannabis programs have an advantage when legalizing cannabis recreationally. To begin, there exists a regulatory framework of tracking, tracing, and testing products that allows the state to open up the recreational market. Arizona legalized recreational cannabis in November 2020 and began sales in January 2021. The state realized \$154.2 million in adult-use tax revenue from January 2021 to January 2022.<sup>10</sup>

Arizona recognized that it can easily adapt adult-use regulations to its existing medical regulations because the primary difference between medical and adult-use products is largely dependent on the purchaser, not the product.<sup>11</sup> Additionally, states with medical cannabis programs have immediate distribution and supply chains and don't have to wait for new licensees to become operational before opening their recreational markets. To be effective, existing operators must have a fee-based pathway to adult-use licenses. While each state must work

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<sup>6</sup> Source: <https://norml.org/blog/2022/02/10/pennsylvania-patients-respond-to-recall-of-medical-cannabis-products-say-such-incidents-strengthen-arguments-to-permit-home-cultivation/>. Retrieved March 4, 2022.

<sup>7</sup> Source: <https://www.fool.com/research/marijuana-tax-revenue-by-state/>. Retrieved March 5, 2022.

<sup>8</sup> Bernstein, Austin and Turcott, Bruce. "Cannabis Law Deskbook." Attorney General Alliance. Thompson Reuters. 2021-2022 Edition. 266.

<sup>9</sup> Amlung M, Reed DD, Morris V, Aston ER, Metrik J, MacKillop J. Price elasticity of illegal versus legal cannabis: a behavioral economic substitutability analysis. *Addiction*. 2019 Jan;114(1):112-118. doi: 10.1111/add.14437. Epub 2018 Oct 10. PMID: 30194789.

<sup>10</sup> Source: <https://azdor.gov/reports-statistics-and-legal-research/marijuana-tax-collection>. Retrieved March 6, 2022.

<sup>11</sup> We concede that in other markets, including Arizona, there can be differences with respect to the types of products that medical patients may purchase as compared to adult-use consumers, i.e., infused products with potency thresholds that are understandably higher for medical patients. To be clear, there is no distinction between medical and adult-use products as envisioned under either CREAMMA or the CRC's regulations adopted thereunder; no separate potency limits, products, etc.

with its operators to protect cannabis access for medical patients, expanding canopy and licenses for existing operators to meet the initial increase in demand should be considered.

## **Social Equity and Justice**

The responsibility to advance equity in cannabis is exacerbated by the painful realities of the racial inequalities produced by its prohibition,<sup>12</sup> and the War on Drugs. Efforts to legalize cannabis must also take seriously the responsibility to incentivize the inclusion of those who were most harmed by prohibition, directly or indirectly, into the newly created regulated market. It is also important to understand that social equity is more than owning a cannabis license, as everyone is not interested in owning a license. Social equity must incentivize broad participation in the wealth that the entire cannabis ecosystem and the ancillary market will create.

One of the lasting legacies of the War on Drugs is over-incarceration. Incarceration negatively impacts housing,<sup>13</sup> community acceptance,<sup>14</sup> job and career opportunities,<sup>15</sup> and relationships.<sup>16</sup> Any law that seeks to legalize cannabis for recreational use should also seek to free those with non-violent and low-level marijuana crimes from incarceration and the record attached to it.

## **Local Control**

All states legalizing recreational cannabis have granted a degree of authority for local jurisdictions to make decisions regarding whether to allow certain cannabis businesses, typically through “opt-in” or “opt-out” frameworks.<sup>17</sup> Because laws pass before their regulations, most local municipalities opt-out until the regulations are released and they can understand the license types and the rules governing the new industry. This reactionary opt-out makes it difficult for potential licensees to identify locations for their businesses. Additionally, if a town with a medical operation opts out of recreational, it can hinder the launch of the adult-use market.

To avoid reactionary opt-outs, the legislation needs an established process for opting out that includes the will of the people and establishes deadlines. In Massachusetts, for example, the state requires an ordinance by the voters if a jurisdiction limits more than one license, limits the number of cannabis establishments to fewer than 20% of alcohol retail establishments, or limits the number of retail establishments to fewer than the number of medical establishments conducting the same activity.<sup>18</sup> States like New York and New Jersey set deadlines for municipalities to opt out.

## **Home Grow**

Home grow encourages participation in the newly created recreational market and supports accessibility and affordability. When accurately regulated with track-and-trace, licensing and registration, plant limits, and clear

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<sup>12</sup> Bernstein, Austin and Turcott, Bruce. “Cannabis Law Deskbook.” Attorney General Alliance. Thompson Reuters. 2021-2022 Edition. 157.

<sup>13</sup> Source: <https://journals.sagepub.com/doi/10.1177/0038026118777447>. Retrieved March 6, 2022.

<sup>14</sup> Source: [https://www.qualitativecriminology.com/pub/kd7uo6o1/release/1?readingCollection=58c45d69\\_](https://www.qualitativecriminology.com/pub/kd7uo6o1/release/1?readingCollection=58c45d69_) Retrieved March 6, 2022.

<sup>15</sup> Source: [https://scholar.harvard.edu/files/brucewestern/files/racial\\_inequality\\_in\\_employment\\_and\\_earnings\\_after\\_incarceration.pdf](https://scholar.harvard.edu/files/brucewestern/files/racial_inequality_in_employment_and_earnings_after_incarceration.pdf) Retrieved March 6, 2022.

<sup>16</sup> Source: <https://www.prisonfellowship.org/resources/support-friends-family-of-prisoners/supporting-successful-prisoner-reentry/seven-ways-adjust-life-after-prison/>. Retrieved March 6, 2022.

<sup>17</sup> Bernstein, Austin and Turcott, Bruce. “Cannabis Law Deskbook.” Attorney General Alliance. Thompson Reuters. 2021-2022 Edition. 212.

<sup>18</sup> Ibid., 212

definitions, this option creates synergy with the rest of the market. However, if not regulated properly, home grow can quickly become an uncontrolled, underground industry that undermines public health and safety.

In closing, cannabis legalization is long overdue and I applaud this committee for helping Pennsylvania take one step closer to it.