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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Judiciary
Friday, March 22, 2019
2:10 p.m.
State Capitol, Conference Room 325**

On the following measure:

**H.C.R. 89, REQUESTING THE UNITED STATES CONGRESS TO ENACT
LEGISLATION REMOVING CANNABIS FROM THE FEDERAL CONTROLLED
SUBSTANCES ACT AND FACILITATE THE FULL SPECTRUM OF PRIVATE
BANKING SERVICES FOR CANNABIS-RELATED BUSINESS**

Chair Lee and Members of the Committee,

My name is Iris Ikeda, and I am the Commissioner of Financial Institutions for the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department offers comments on this resolution.

This resolution requests the United States Congress to enact legislation that will remove cannabis from the federal Controlled Substances Act and facilitate the full spectrum of private banking services for cannabis-related business.

The DFI is responsible for ensuring the safety and soundness of state-chartered banks and state-chartered credit unions. The DFI also regulates money transmitters, which have been providing services to cannabis businesses in the absence of traditional financial institutions so doing.

The well-documented conflict between federal and state law on allowing private banks to serve cannabis-related businesses has created barriers for banks desiring to serve businesses involved in state-licensed cannabis activities. This has resulted in regulatory and legal risk at the insured depository level, de-risking in the financial sector to mitigate risks, and the rise of a “cash and carry” industry.

The lack of clarity on how banks can serve the cannabis industry, without the threat of forfeiture of assets or criminal penalties, has led to an increase in cannabis cash transactions. Barriers for financial institutions to serve cannabis and ancillary businesses create a commercial condition devoid of robust regulation and supervision; these barriers also diminish the ability to identify operators who are circumventing federal and state licensing and regulatory frameworks. This raises public safety concerns, increases difficulty in tracking the flow of funds, and contributes to a loss of opportunities for economic activity, workforce development, and community development.

The limited number of U.S. financial institutions serving this industry previously relied on the Department of Justice’s “Cole Memo,” which was rescinded in January 2018. Currently, financial institutions rely on guidance from the Financial Crimes Enforcement Network (FinCEN) relating to Bank Secrecy Act and Anti-Money Laundering Act requirements.

While Congress has taken some action, such as the Rohrbacher amendment prohibiting the use of federal funds to interfere with state medicinal marijuana programs, this is a stopgap approach that requires a permanent resolution. Banking services availability under the SAFE Banking Act, H.R. 1595 has bipartisan support and is agnostic about other issues pertaining to cannabis. The DFI supports legislation that creates a safe harbor for financial institutions to serve a state-compliant business or that entrusts sovereign states with full oversight over and jurisdiction of cannabis-related activity.

Thank you for the opportunity to testify on this bill.



Akamai Cannabis Clinic

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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 89
REQUESTING CONGRESS TO DESCHEDULE CANNABIS

By
Clifton Otto, MD

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Friday, March 22, 2019; 2:10 PM
State Capitol, Conference Room 325

Thank you for the opportunity to provide testimony on this resolution. Please consider the following comments:

We cannot have the Legislature continue to ignore a solution to the current misconception that Hawaii's Medical Use of Cannabis Program is violating federal law.

If the goal of this resolution is to remove the barriers to Hawaii's medical use of cannabis dispensaries operating as legitimate businesses, then a much simpler and more direct strategy is to recognize that the medical use of cannabis in Hawaii fails to meet the state and federal definition of a Schedule I controlled substance.

State medical use of a controlled substance is "currently accepted medical use in treatment in the United States", which means that the medical use of cannabis in Hawaii is exempt from the federal regulation that treats non-medical cannabis as a Schedule I controlled substance.

Also, a controlled substance with medical use cannot have the "highest degree of danger", which means that the medical use of cannabis in Hawaii is exempt from the provision in Hawaii's Uniform Controlled Substances Act (UCSA) that treats non-medical cannabis as a state Schedule I controlled substance.

"An Accepted Medical Use Supporter"

Testimony on HCR89
House Committee on Judiciary
March 22, 2019
Page 2

The first step towards legitimizing the medical use of cannabis in Hawaii is to re-harmonize the medical use of cannabis with the regulation of cannabis under Hawaii's UCSA by adding the following amendment:

Section 329-14, Hawaii Revised Statutes, is amended by adding the following subsection:

(f) The enumeration of cannabis, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances does not apply to the medical use of cannabis pursuant to Section 329, Part IX, and Section 329D, Hawaii Revised Statutes.

Congress does not need to remove cannabis from the federal Controlled Substances Act (CSA) in order to allow our dispensaries to utilize banking services. We only need to have the Drug Enforcement Administration (DEA) adopt a rule, like the federal exemption for the sacramental use of peyote, that recognizes at the federal level that the state medical use of cannabis does not violate federal law.

[Exempt from federal Schedule I:](#)

21 CFR 1307.31 - Native American Church.

“The listing of peyote as a controlled substance in Schedule I **does not apply** to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration.”

Therefore, the goal of this resolution will be better served by asking the DEA to initiate administrative procedures to adopt a rule that exempts the state medical use of cannabis from federal Schedule I regulation.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy SanBuenaventura, Vice Chair

Friday, March 22, 2019

2:10 pm

Room 325

SUPPORT for HCR 89 – Remove Cannabis from Federal Controlled Substance List

Aloha Chairs Takayama & Lee, Vice Chairs Gates & SanBuenaventura and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons supports this measure that requests Congress to remove cannabis from the Controlled Substances Act and facilitates the full spectrum of banking services for cannabis-related businesses.

Removing cannabis from federal law would help dispensaries who have spent a considerable amount of capital to set up their businesses. Just as the legislature helps small businesses, this resolution asks for that same assistance.

Please support this resolution to help businesses that are serving our people enjoy the same rights as other businesses in Hawai`i nei.

Mahalo nui for this opportunity to testify.



Dedicated to safe, responsible, humane and effective drug policies

Testimony in Support of HCR 89

TO: House Judiciary Committee
FROM: Nikos Leverenz, Board President
DATE: March 22, 2019 (2:10 PM)

Chair Lee, Vice Chair San Buenaventura & Committee Members:

Drug Policy Action Group **strongly supports** HCR 89, which requests the United States Congress to enact legislation that would remove cannabis from the federal Controlled Substances Act and facilitate the provision of private banking services for cannabis-related business.

These changes in federal law are needed to help strengthen the operational framework of Hawaii's current medical cannabis dispensary system and to provide latitude to this Legislature and other statehouses to pursue long overdue cannabis-related reforms.

In recent years, bills have been introduced in Congress to provide that federal regulators will not penalize financial institutions who provide services to cannabis-related businesses. This includes [H.R. 1595](#), the Secure and Fair Enforcement (SAFE) Banking Act of 2019, [which has already had a hearing before the House Financial Services Committee](#) and is likely to receive a vote next week. The bill has 138 co-sponsors, including both members of the Hawaii delegation. It has received the [formal support of the American Bankers Association](#), in addition to [the Credit Union National Association, Independent Community Bankers of America, and 19 Attorneys General](#).

In recent years, bills have been introduced in Congress to de-schedule cannabis. This includes [H.R. 1227](#), the Ending Federal Marijuana Prohibition Act of 2017. Similar measures were introduced in 2011, 2013, and 2015. A similar measure is likely to be introduced and heard in the U.S. House this year now that Democrats are in the majority. As noted in the text of the resolution, scheduling under the federal Controlled Substances Act impairs the ability of medical cannabis dispensaries and other cannabis-related businesses to operate without the prospect of federal seizures, forfeitures, arrests, and other enforcement and prosecutorial actions.

As this Legislature continues to contemplate the best way forward on medical cannabis, cannabis decriminalization, and the taxation and regulation of adult-use cannabis, DPAG is hopeful that measures will be taken to curb, if not forestall, the longstanding deleterious impacts of cannabis prohibition.

These impacts are particularly felt by the many thousands of Hawaii residents who have been subject to arrest for the personal possession of cannabis, currently a misdemeanor that, upon conviction, carries [over 100 “collateral consequences,” including the frustration of an individual’s ability to procure or maintain education, housing, and employment](#) opportunities. For juveniles, [adversarial encounters with law enforcement and the courts can have far-reaching negative consequences for their health, educational and economic attainment, and even lifespan](#). For immigrants, [a prior misdemeanor conviction can conceivably result in indefinite detention](#) given the recent U.S. Supreme Court ruling in *Preap v. Nielsen*.

The late Nobel economist Milton Friedman noted the corrosive influence that cannabis prohibition has character of America’s public institutions: “It’s a moral problem. It’s a problem of the harm which the government is doing... I think it’s absolutely disgraceful that our government [should] be in the position of converting people who are not harming others into criminals.” (American Enterprise Institute, [“Milton Friedman Interview from 1991 on America’s War on Drugs.”](#))

Thank you for the opportunity to testify on this measure.

HCR-89

Submitted on: 3/21/2019 2:07:00 PM

Testimony for JUD on 3/22/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Drug Policy Forum of Hawaii	Support	No

Comments:

Chair Lee, Vice Chair San Buenaventura, Committee Members:

This resolution sends the right message to Congress regarding the position of Hawai'i residents the role of cannabis in our society.

Removing cannabis itself from the Controlled Substances Act entirely makes perfect sense given its status as a plant. The Schedule I status of cannabis hinders research and facilitates criminalization.

Further, next week the US House of Representatives Committee on Finance will hold a vote on the Secure and Fair Enforcement (SAFE) Banking Act of 2019. With states like Hawai'i supporting this effort to legitimize cannabis as a medicine and a business, Congress will all the more likely to act, helping to end the tension between state and federal law.

Mahalo for the opportunity to testify.

HCR-89

Submitted on: 3/20/2019 2:54:22 PM

Testimony for JUD on 3/22/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments:

I strongly support HCR89. This is long overdue cannabis from the federal control substance act.

Please pass.

Mike Golojuch, Sr.

HCR-89

Submitted on: 3/20/2019 5:23:24 PM

Testimony for JUD on 3/22/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ka'imi Nicholson	Individual	Support	No

Comments:

I strongly support REQUESTING THE UNITED STATES CONGRESS TO ENACT LEGISLATION REMOVING CANNABIS FROM THE FEDERAL CONTROLLED SUBSTANCES ACT AND FACILITATE THE FULL SPECTRUM OF PRIVATE BANKING SERVICES FOR CANNABIS-RELATED BUSINESS.

I am so impressed by the medical benefits of cannabis. We all need to ease the way for this plant medicine to become known about and used for healing, because it is powerful healing with no toxic side effects. Mahalo nui loa.

HCR-89

Submitted on: 3/20/2019 1:57:27 PM

Testimony for JUD on 3/22/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Dinner	Individual	Support	No

Comments:

TO: House of Representatives, Committee on Judiciary
FROM: Wendy Gibson R.N.
RE: HCR 89 / HR 86 (IN Support)
Hearing March 22 2019 Conference Room #325, 2:10 PM

Dear Chair Lee, Vice Chair San Buenaventura and Committee Members,

I am Wendy Gibson, an R.N, a Cannabis Nurse Educator and member of the American Cannabis Nurses Association. I have worked in health care in the United States for over 34 years, 24 of those in Hawaii (10 of those in pharmacy work).

I strongly support HR86/HCR89. I believe that the botanical medicine, cannabis needs to be **REMOVED** from the Controlled Substance Act entirely. It never belonged in a Schedule I category and still **does not meet any of the criteria listed below.**

In whole plant form, with hundreds of therapeutic chemicals, cannabis cannot meet the FDA's criteria to become an "accepted" medicine. So, whole plant botanical medicine can never be "prescribed". **Nearly every State in the USA** recognizes some type of medicinal use of cannabis. Hawaii and 32 other USA States have medicinal cannabis programs, with another 14 States recognizing the medicinal use of CBD (one of the major components of cannabis). The Federal Government IND program provides medicinal cannabis to patients and has done so since 1978.

These are some of the reasons why I believe cannabis does not meet any of the criteria for the Schedule I category and should be removed:

1. The potential for ABUSE is low, not high
2. It does have "Accepted" medical use in 33 US States and 30 Countries
3. It has been used safely under medical supervision for thousands of years.

1. Potential for **Abuse**—Although cannabis is used very widely globally, it does not have a "high" potential for abuse. Most people who use cannabis do so responsibly, without problems. Rates of cannabis abuse have been greatly exaggerated: the numbers derived from court-mandated treatment (to avoid jail time) or the result of using the DSM-5 manual (a poor tool for measurement of use of an illegal substance). One addiction specialist, Dr. Carl Hart explains that the numbers are much lower than the often-cited "9%", perhaps more like 2.6 percent (and possibly up to 11.5% in those who start using before the age of 14).

http://www.huffingtonpost.com/sunil-kumar-aggarwal/cannabis-dependency-drug-war-bad-science_b_4675961.html

2. **Medical usefulness has been accepted** in the United States--multiple times:
 - a. **Between 1850 and 1939** when hundreds of cannabis-based medications were sold in pharmacies and was described in the United States Pharmacopoeia (USP).

- b. **From 1978 to the Present** with the Federal Government’s **Investigational New Drug program**—of which there are 4 surviving patients who have benefitted from the medicinal properties of cannabis for many years. Monthly, they receive their allotted 300 rolled marijuana cigarettes that the Federal government supplies. [See: <http://www.medicalcannabis.com/patients-care-givers/federal-ind-patients/>]
- c. **In 2017** The National Academy of Sciences, Engineering, and Medicine released a comprehensive report, a review of over 10,000 scientific abstracts, showing conclusive or substantial evidence exists for the **efficacy of whole-plant cannabis** and its derivatives in patients suffering from chronic pain, multiple sclerosis, and other disorders. The report questions the Schedule I status.
- d. **In 2019** the **number of US States** that recognize some medicinal usefulness is 49 out of 50. There are medical cannabis programs in 33 States, plus the District of Columbia, Guam and Puerto Rico. 15 additional States recognize the medicinal properties of CBD. The States have removed cannabis from the Schedule I drug category in a de facto fashion. Also, **In 2019** the **number of Countries** with medical cannabis acceptance is more than 30 [https://en.wikipedia.org/wiki/Legality_of_cannabis]

3. A lack of accepted safety for use under medical supervision

- e. Millions of patients are currently using cannabis under medical supervision—globally, without incident. We have dosing guidelines for THC and CBD.
- f. Prescription drugs with CBD and THC are available in at least in 30 countries (Sativex in 28, Marinol, Syndros and Epidiolex in the U.S.)
- g. Protocols for use of whole plant medicines, under medical supervision have been developed
- h. Whole plant medicine has a better safety profile than over-the-counter or prescription drugs, with a fairly predictable list of side effects that does not include death and no true “Lethal dose”.
- i. With over 28,000 scientific studies we do know that most of the side effects are **predictable, manageable and tend to dissipate** over time (as the patient develops tolerance).
- j. Side effects are **well within the range that is deemed acceptable** for most prescription drugs.
- k. Tens of thousands of health care professionals support the removal of cannabis from the Schedule I drug status to remove barriers to research
[See: American Academy of Neurology statement at <https://www.aan.com/policy-and-guidelines/policy/position-statements/medical-marijuana/> and

Organizations Supporting Access to Therapeutic Cannabis
<http://www.medicalcannabis.com/about/health-care-professionals/supporting-organizations/>]

RE: Safety--It has been established by multiple Government Commissioned Studies such as the La Guardia Committee Report (1944), the Shafer Commission report (1972). I would like to remind you of **DEA Judge** Francis L. Young's findings in 1988: In medical treatment "safety" is a relative term. A drug deemed "safe" for use in treating a life-threatening disease might be "unsafe" if prescribed for a patient with a minor ailment. The determination of "safety" is made in terms of whether a drug's benefits outweigh its potential risks and the risks of permitting the disease to progress. Marijuana, **in its natural form**, is **one of the safest therapeutically** active substances known to man. By any measure of rational analysis marijuana can be safely used within a supervised routine of medical care. The Act, at 21 U.S.C. § 812(b)(1)(C), requires that marijuana be retained in Schedule I **IF" there is a lack of accepted safety for use --under medical supervision."** If there is no lack of such safety, if it is accepted that this substance can be used with safety under medical supervision, then it is **unreasonable to keep it in Schedule I**. He also stated that "It would be unreasonable, **arbitrary and capricious** for DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record."

[<http://medicalcannabisreport.com/wpcontent/uploads/2015/05/FLYoungDEARuling1988.pdf>]

I agree with the 2018 ECDD recommendation that preparations considered to be **pure cannabidiol should not be scheduled within the International Drug Control Conventions**. Their report says that cannabidiol is found in cannabis and cannabis resin does not have psychoactive properties and has no potential for abuse and no potential to produce dependence. It does not have significant ill-effects. Cannabidiol has been shown to be effective in the management of certain treatment-resistant, childhood-onset epilepsy disorders . . .
[See: <https://www.govinfo.gov/content/pkg/FR-2019-03-01/pdf/2019-03662.pdf>]

The medical community, patients and problematic drug users have suffered as a result of more than 80 years of cannabis prohibition. Research has been grossly stunted and slanted [See: Pharmacy and Therapeutics. 2017 Mar; 42(3): 180-188. Medicinal Cannabis: History, Pharmacology, And Implications for the Acute Care Setting <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5312634/>]

Millions of patients have had to fight for decades to gain access to a comparatively safe medicine, which in many cases is the **ONLY** medication that works for them and helps them get off of other, more harmful and addictive substances such as opiates and benzodiazepines. Public health has suffered: youth seek more dangerous alternatives to getting high such as synthetic drugs which can be deadly; those who need help with substance use disorders do not seek medical help or end up in

jail/prison where they do not get therapies; patient's do not disclose their cannabis use and may experience drug-drug-interactions; we have an opioid overdose crisis which could be lessened if medical cannabis was an accepted and available option. **Because of Prohibition, Banking has been severely restricted.** Legal cannabis transactions are restricted to cash only transactions and that has been problematic for our dispensary licensees. HCR89 / HR86 will address this.

The biggest tragedy in my mind is that prohibition has led to widespread fear and ignorance in the medical community. **Most health care professionals are unaware** of the endocannabinoid system (ECS), our bodies own THC factory and the master controlling system of our neurologic and immune systems. Most health care professionals are unaware of **the existence and importance of the ECS**, the largest neurotransmitter system in the human body—that responds to cannabinoids.

Please keep in mind that the **placement of cannabis into the schedule I drug category was never based upon anything scientific** and was supposed to be temporary (until more science came in). In 1970, President Richard M. Nixon's wish was to disrupt Vietnam war protestors and black communities by placing cannabis and heroin into the Schedule I drug category. He got his wish.

The results of this War on Drugs has been a violent racist-fuelled disaster, deemed to be a FAILED WAR by the **Global Commission on Drug Policy in 2011**. Their report argues that the decades-old "global war on drugs has failed, with devastating consequences for individuals and societies around the world. Instead of punishing users who the report says "do no harm to others," the commission argues that governments should **end criminalization of drug use**, experiment with legal models that would undermine organized crime syndicates and **offer health and treatment services for drug-users in need**.

[\[https://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf\]](https://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf)

In Summary: The Scheduling of any "drug" needs to be **based upon the science** of the safety and effectiveness of the drug, not based upon law enforcement's views. Cannabis medicines contain multiple ingredients and cannot meet the FDA's requirements to be "accepted" medicine. It has been approved by most USA States as a medicine and States retain the rights to govern the practice of Medicine. Cannabis does not belong in the Controlled Substance Act. Please remove it.

Thank you for this opportunity to testify.

Wendy Gibson RN/BSN American Cannabis Nurses Association Member
(808) 321-4503

HCR-89

Submitted on: 3/21/2019 8:08:51 AM

Testimony for JUD on 3/22/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support HCR89. There is vast support across our state and country for this proposal. Already, 33 states allow medical cannabis, 22 have decriminalized cannabis, and 10 states have legalized cannabis.

Removing cannabis from the Controlled Substance Act would support Hawaii's 24,000 cannabis patients and reduce Hawaii's arrest rate by 1,000 arrests per year for cannabis possession.

Helping dispensaries with banking would remove the less than safe cash only business.

Please support this bill.

HCR-89

Submitted on: 3/21/2019 12:11:46 AM

Testimony for JUD on 3/22/2019 2:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

HCR-89

Submitted on: 3/21/2019 9:31:56 PM

Testimony for JUD on 3/22/2019 2:10:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney Mrowczynski	Individual	Support	No

Comments:

STRONGLY SUPPORT!

HCR-89

Submitted on: 3/22/2019 3:11:55 AM

Testimony for JUD on 3/22/2019 2:10:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Individual	Support	No

Comments: