

**HCR-89**

Submitted on: 4/14/2019 6:06:51 AM

Testimony for PSM on 4/16/2019 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Testifying for Maui Police Department	Oppose	No

Comments:

Strongly oppose this and other similar measures that will degrade the quality of life in Hawaii nei.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, April 16, 2019

1:35 pm

Room 016

### SUPPORT FOR HCR 89 - REMOVING CANNABIS FROM FEDERAL CONTROLLED SUBSTANCE ACT & FACILITATE FULL SPECTRUM OF BANKING SERVICES

Aloha Chair Nishihara, Vice Chair Wakai and Members of the Committee!

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 HCR 89 that requests Congress to remove cannabis from the Controlled Substances Act and facilitates the full spectrum of banking services for cannabis-related businesses.

Cannabis has been used as medicine for thousands of years and we have seen the difference it has made in the quality of life for patients and others suffering from a variety of ailments. A 2017 article<sup>1</sup> cited landmark research:

The National Academy of Sciences on Thursday released a groundbreaking report<sup>2</sup>, "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research." The report states that there is conclusive evidence that marijuana can be used as a medicine.

The report did not find clinical evidence for all conditions marijuana treatment is often associated with, but it recognizes its efficacy for treating many medical conditions

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<sup>1</sup> **Landmark Study: Marijuana Is Indeed Effective Medicine**, Schedule I classification a barrier to cannabis research, National Academy of Sciences says, By: Drug Policy Alliance, January 13, 2017.

<https://thefreshtoast.com/cannabis/marijuana-is-effective-medicine-landmark-study-concludes/>

<sup>2</sup> **The Health Effects of Cannabis and Cannabinoids** - The Current State of Evidence and Recommendations for Research (2017), National Academy of Sciences. <https://www.nap.edu/download/24625>

such as “chronic pain in adults ... chemotherapy-induced nausea and vomiting and multiple sclerosis spasticity symptoms.”

“This report is vindication for all the many researchers, patients and healthcare providers who have long understood the benefits of medical marijuana,” said Michael Collins, Deputy Director of National Affairs at the Drug Policy Alliance. “To have such a thorough review of the evidence conclude that there are benefits to medical marijuana should boost the case for federal reform. It also underlines how out of touch the DEA and other marijuana reform opponents are when they claim otherwise.”

*The Controlled Substances Act (CSA), signed into law by President Richard Nixon in 1970, is the main federal statute regulating possession and use of certain substances, such as heroin, LSD, and cocaine. The CSA has five “schedules” that rank these substances based on three main attributes: the drug’s potential for abuse, existence of a current medical use, and its potential for safe use under medical supervision. The Food and Drug Administration (“FDA”) and the Drug Enforcement Administration (DEA) make these determinations.*

*Schedule I is for substances that the FDA and DEA have determined to have a high potential for abuse, no currently accepted medical use, and a lack of safety for use under medical supervision. Schedule I drugs are the most tightly regulated of all five schedules. Any use, even simple possession, of any amount of a Schedule I substance is illegal and punishable under federal law. Cannabis is currently classified as a Schedule I drug in the CSA, along with heroin, peyote, and MDMA. Any possession or use of the substance, even if legal under state law, is illegal under federal law and punishable under the CSA.<sup>3</sup>*

We know that racism has been the basis for the hysteria about this plant. This has denied millions of people relief from chronic pain and other ailments and has been the biggest barrier to research.

Banking has been a big problem for cannabis-related businesses in this growing market. An excerpt from an article in Cannabis Business Times<sup>4</sup> reported: “GFA Federal Credit Union [announced last fall](#) that it would be the first financial institution to wade into Massachusetts’ adult-use cannabis market. “We’re looking at a cannabis business as a legitimate business that wants to be recognized as such and that, **without banking services, presents a tremendous public safety issue in our communities,**” Tina Sbrega, GFA’s chief executive, told the Boston Globe. “Otherwise, you’re talking millions and millions of dollars of cash on the street.”

Please support this resolution to help our people who don’t want to take narcotics to relieve their suffering and for the growing businesses that are serving our people enjoy the same rights as other businesses in Hawai’i nei.

Mahalo nui for this opportunity to testify.

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<sup>3</sup> **Cannabis and the Controlled Substances Act**, By Kendall Fisher, McGeorge School of Law, Capital Center for Law & Public Policy, October 27, 2017. <https://www.capimpactca.com/2017/10/cannabis-controlled-substances-act/>

<sup>4</sup> **As Cannabis Markets Mature, Businesses Look to Financial Institutions for Transparent Banking**, How should a business owner best navigate the banking landscape? By Eric Sandy, January 18, 2019. <https://www.cannabisbusinesstimes.com/article/banking-cannabis-business-transparency/>



## **Akamai Cannabis Clinic**

3615 Harding Ave, Suite 304  
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### TESTIMONY ON HCR89

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

By  
Clifton Otto, MD

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Tuesday, April 16, 2019; 1:35 PM  
State Capitol, Conference Room 016

Thank you for the opportunity to provide testimony on this measure. Please consider the following comments related to this resolution. This may be the last chance you have this session to protect the medical use of cannabis in Hawaii.

Instead of asking Congress to de-schedule a substance that is nothing like alcohol or tobacco, we need to fix the situation with our Medical Use of Cannabis Program.

State medical use of a controlled substance is “currently accepted medical use in treatment in the United States”, which means that the federal regulation that has cannabis listed as a Schedule I controlled substance does not apply to the medical use of cannabis in Hawaii.

We already have several examples where activities related to Schedule I controlled substances are exempt from state and federal controlled substance regulation:

#### [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.”

“An Accepted Medical Use Supporter”

[Exempt from Guam Schedule I:](#)

Section 2. The following *new* subsection (g) is added to Appendix A of Chapter 67 of Title 9 Guam Code Annotated, to read as follows:

“(g) The enumeration of marihuana, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances **does not apply** to the medical use of cannabis pursuant to the Joaquin Concepcion Compassionate Cannabis Use Act of 2013.”

[Exempt from aircraft carriage restriction:](#)

14 CFR 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(b) Paragraph (a) of this section **does not apply** to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.”

Congress has already done its job by providing a mechanism within the federal Controlled Substances Act (CSA) that allows for changes in state medical use to impact federal scheduling. This construction allows for re-harmonization of the state and federal regulation of controlled substances when there is a change in state medical use.

Congress never defined “accepted medical use”, and never said that states cannot decide what constitutes the medical use of a controlled substance. Therefore, it is up to the states to determine what constitutes accepted medical use, and Hawaii has already done so when it accepted the medical use of cannabis in 2000.

By refusing to address this issue, we are only perpetuating the myth that Hawaii’s Medical Use of Cannabis Program is violating federal law, and thereby continuing all the unintended consequences that occur when the root cause of the current disconnection between the state and federal regulation of cannabis is ignored.

Please don’t try to place another band-aid upon the wound that has been created by this apparent conflict. Instead, action needs to be taken to protect Hawaii’s Medical Use of Cannabis Program by adopting the following amendment to this resolution:

WHEREAS, the federal Controlled Substances Act (CSA) says that a substance cannot be in federal Schedule I if it has “currently accepted medical use in treatment in the United States”. (See [21 U.S.C. 812. Schedules of Controlled Substances](#); (b) Placement on schedules; findings required, (1) Schedule I, (B) The drug or other substance has no currently accepted medical use in treatment in the United States.); and

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WHEREAS, the courts have acknowledged that Congress never defined the term "currently accepted medical use", which leaves it to the states to determine what constitutes accepted medical use in their state. (See [ACT v. DEA, 930 F.2d 936,936 \(D.C. Cir. 1991\)](#)); Neither the statute nor its legislative history precisely defines the term "currently accepted medical use".); and

WHEREAS, the courts have acknowledged that having medical use in just one state is sufficient to have medical use in the United States. (See [Grinspoon v. DEA, 828 F.2d 881,886 \(1st Cir. 1987\)](#)); Congress did not intend "accepted medical use in treatment in the United States" to require a finding of recognized medical use in every state.); and

WHEREAS, the Supreme Court has acknowledged that the decision-making authority to accept the medical use of controlled substances is reserved to the states. (See [Gonzales v. Oregon \(2006\)](#)); The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard of care and treatment of patients that is specifically authorized under state law.); and

WHEREAS, the State of Hawaii exercised its authority to accept the medical use of a controlled substance when it determined that cannabis has medical use and enacted Hawaii's Medical Use of Cannabis Act of 2000, thereby creating a state-regulated medical use of cannabis program in accordance with state law and federalism. (See Hawaii's Uniform Controlled Substances Act, [HRS 329, Part IX. Medical Use of Cannabis.](#)); and

WHEREAS, the state medical use of cannabis is "currently accepted medical use in treatment in the United States", which means that the federal regulation that places marihuana in federal Schedule I "**does not apply**" to the medical use of cannabis in Hawaii. ([See 21 CFR 1308.11 Schedule I.](#); (d) Hallucinogenic substances. (23) Marihuana and (31) Tetrahydrocannabinols.); now, therefore

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BE IT RESOLVED by the House of Representatives of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019, the Senate concurring, that this body hereby requests the U.S. Department of Justice to instruct the Drug Enforcement Administration to adopt an administrative rule recognizing that the federal regulation that has marihuana listed as a Schedule I controlled substance does not apply to the state-accepted medical use of cannabis in Hawaii.



*Dedicated to safe, responsible, humane and effective drug policies*

## **Testimony in Support of HCR 89**

TO: Senate Committee on Public Safety, Intergovernmental, & Military Affairs  
FROM: Nikos Leverenz, Board President  
DATE: April 16, 2019 (1:35 PM)

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Chair Nishihara, Vice Chair Wakai & 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 [passed by a 45 to 15 vote](#). The bill has 158 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](#). Last week [the Senate introduced a similar measure co-sponsored by 20 senators, including Senators Hirono and Schatz](#).



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. Earlier this month, [Director of the National Institute on Drug Abuse Nora Volkow testified before a U.S. House Appropriations subcommittee that having a substance on Schedule I inhibits scientific research.](#)

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 on the 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.

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Submitted on: 4/15/2019 1:17:25 PM

Testimony for PSM on 4/16/2019 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carl Bergquist	Testifying for Drug Policy Forum of Hawaii	Support	No

Comments:

Chair Nishihara, Vice Chair San Wakai, 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, on March 28, 2019 the US House of Representatives Committee on Finance voted 45-15 to pass [the Secure and Fair Enforcement \(SAFE\) Banking Act of 2019 \(H.R. 1595\)](#) to the House Committee on Judiciary. This was a bipartisan vote.

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.

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Submitted on: 4/16/2019 11:17:33 AM

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:

To the Honorable Clarence K. Nishimura, the Honorable Glenn Wakai, and members of the Committee on Public Safety, Intergovernmental, and Military Affairs:

The O`ahu County Democrats Legislative Priorities Committee submits its testimony in support of HCR89 as there are over 24,000 medical cannabis patients registered with the Hawai'i Department of Health, and Hawai'i's medical cannabis dispensaries and other cannabis-related businesses, including those providing goods, services, property, and facilities to cannabis-related businesses, are being hampered by the inability to obtain private banking services under current federal law. Given that the sales of medical cannabis in Hawai'i are prevalent and the likelihood of legalization may not be too far into the future, the United States Congress should enact legislation that will remove cannabis from the federal Controlled Substances Act which would allow, among other things, for private banking services for cannabis-related businesses in the State of Hawai'i.

Thank you for this opportunity to submit support testimony on HCR89.

Mahalo nui loa.

Melodie Aduja

Chair, O`ahu County Democrats Legislative Priorities Committee