



August 3, 2020

The Honorable Joseph R. Biden
Democratic Nominee for President of the United States

Dear Vice President Biden,

We write in response to the Biden-Sanders Unity Task Force Recommendations, specifically in response to the provisions related to cannabis appearing in the Protecting Communities by Reforming Our Criminal Justice System section on page 7 and the Fair Sentencing and Reducing Incarceration section (within the Criminal Justice Unity Task Force Recommendations) appearing on page 59.

We wish to thank you and the task force for your leadership in this critical area, but to also urge a more comprehensive approach. Like a large majority of American voters, we believe a Biden administration should embrace full legalization of cannabis and remove it from the list of controlled substances. We and many others do not believe our country can adequately address racial injustice and police reform without ending the war on cannabis, complete with measures to ensure equity and inclusion in the industry, expungement and release of cannabis prisoners, and reinvestment in the communities of color that have been disproportionately targeted.

While we advocate for comprehensive reform, we acknowledge many of the key provisions that were proposed by the task force are a major advancement from the law today and are historic in nature. We strongly support expunging criminal records related to cannabis, stopping deportations based on cannabis use, allowing states to regulate cannabis without federal interference, encouraging those states to invest in Black and Brown communities hit by mass incarceration and uneven enforcement, and legalizing medical cannabis nationwide. Short of a more comprehensive approach, we offer the following recommendations.

“Decriminalization” must remove *all* federal penalties for personal use and possession.

The task force’s marijuana policy proposal includes decriminalizing marijuana. We urge that “decriminalization” be interpreted similarly to the recommendations of the 1972 Report of the National Commission on Marihuana and Drug Abuse, so that “possession of marihuana for personal use would no longer be an offense” under federal law.

It is critical that *all* federal penalties including both within federal criminal law and other forms of penalty are removed as they relate to individual cannabis possession and use. There are many examples of non-criminal but serious consequences that apply to those who possess or consume cannabis. These include loss of federal housing assistance, felony penalties for gun possession, immigration impacts including deportation, and negative job prospects. Colleges should not be denied federal funds for allowing cannabis use (including research) as they are

today through the Drug-Free Schools and Communities Act. Individuals on probation or parole should not be sent back to jail or prison based on cannabis use, unless expressly prohibited by the court and germane to the underlying offense. Because marijuana possession laws and related disqualifications are often enforced unevenly and disproportionately against communities of color, maintaining a penalty system — whether criminal in nature or not — will perpetuate inequality and discrimination.

Allowing states to regulate requires a change in federal law, not simply a non-enforcement policy.

The task force recommendations include “allow[ing] states to make their own decisions about legalizing recreational use.” This must entail actually removing federal criminality, not merely adopting a policy of non-enforcement.

Under the 2013 Cole memo, federal criminal laws were not being enforced against those operating within state-legal cannabis industries, but those activities remained illegal. There was always the possibility of prosecution, even when following state law. Considering that under current federal law cannabis sales that are deposited into federally chartered banks are considered a form of money laundering, state regulatory programs are undermined. Similarly, the unfair financial pressure placed on all cannabis businesses under the requirements of the tax code under 26 U.S. Code § 280E, including minority-owned businesses, is due in large part to the status of cannabis as an illegal controlled substance. Consideration must be given to areas that limit states’ ability to effectively regulate state-sanctioned activity.

Federal cannabis laws must not undo state programs.

The task force’s recommendation of “legaliz[ing] marijuana for medical purposes at the federal level” is long overdue and would provide medical cannabis access in the 17 states that currently do not have it. However, this must be carefully executed to avoid unintended consequences that might disrupt patients’ access to their medicine in existing state programs.

In the face of federal inaction over the past 24 years, 33 states have set up their own systems for medical cannabis access that millions of patients rely on. These programs are very different from existing federally regulated systems for prescription drugs. States allow for an array of different preparations from dispensaries. About half of the states allow home cultivation. Federal medical cannabis laws must supplement — and legalize — these state programs, rather than seeking to replace them. Federal law should include provisions to enable states to continue to regulate adult-use and medical cannabis products without significant interference from the FDA or DEA.

Equity and racial justice should be at the heart of a Biden administration’s cannabis policy.

Race, cannabis, and the war on drugs are inextricably linked. America’s criminalization of marijuana has its roots in racism, and that history follows it today. It is well documented in communities across the country that African Americans are disproportionately impacted by cannabis laws. In most or all states, Black individuals are several times more likely to be stopped, harassed, searched, arrested, and thrown in jail than their white counterparts.

As mentioned, removing criminal and non-criminal penalties is essential to a more just society. Simply reducing the incidents of interaction between individuals and law enforcement will relieve pressure in strained communities. But as our country turns from vilifying communities to seeking to undo the harms of the past, we must go beyond simply ending penalties. We must consider ways to create opportunity and repair harm in communities that have been most deeply impacted.

We ask you to seriously consider ways to help ensure that cannabis programs are fair and help reduce the harm that resulted from the war on marijuana. These should include protections for banks that offer loans to minority business applicants. State programs should be encouraged to adopt inclusive policies that create opportunities for minorities, and revenue drawn from state programs should be available to disadvantaged communities to help rebuild or expand their potential.

Conclusion

Again, we thank you and members of the task force for taking a leadership role in criminal justice reform, and while we would prefer a more comprehensive approach, we appreciate the major advancements that have been presented. Realizing your goal of decriminalizing cannabis and legalizing it for medical purposes will require careful consideration. We urge a Biden administration to remove all the penalties associated with cannabis use, federal law should change to more clearly open the door for state regulatory authority, federal law should not undermine existing state programs, and equity should be a driving force behind cannabis policy reformation.

Thank you for your time and consideration,

A handwritten signature in black ink that reads "Steve Hawkins". The signature is written in a cursive style with a large, stylized "S" and "H".

Steven Hawkins
Executive Director
Marijuana Policy Project