



December 5, 2023

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President,

Thank you for your leadership in directing the Department of Health and Human Services (HHS) health agency to reconsider the classification of cannabis and their subsequent recommendation to the Drug Enforcement Administration (DEA) to reschedule cannabis. We hope that DEA will follow suit and reschedule cannabis to Schedule III this year, given that 88 percent of Americans are in favor of legalization for medical or recreational use.¹ Rescheduling cannabis aligns with a safe, regulated product that Americans can trust.

While we know that the Food and Drug Administration's (FDA) decision was based solely on science and medicine, it also increases public health and safety, is sound public policy, and is a big win for states, especially helpful for the 38 states that have some form of state-regulated cannabis policies in place, which represent 72% of the population.² This policy shift will solidify the state-regulated improvements that have governed safely for more than a decade. Most significantly, it will benefit our constituents by further protecting public health and safety. State programs have also delivered \$15 billion in tax revenue to states for use in education, law enforcement, and other gubernatorial priorities that have been historically underfunded.³ As governors, we champion all these victories, just as we do for banking reform and support rescheduling reform to further these achievements.

1 Ted Van Green, *Americans overwhelmingly say marijuana should be legal for medical or recreational use*, PEW RESEARCH CENTER (Nov. 22, 2022), <https://www.pewresearch.org/fact-tank/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use>.

2 *Compare Marijuana Legality by State*, DISA (Sept. 1, 2023), <https://disa.com/marijuana-legality-by-state>, with *State Population Totals and Components of Change: 2020-2022*, UNITED STATES CENSUS BUREAU (Dec. 2022) (population data available from "Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2022 (NST-EST2022-POP)" hyperlink).

3 Marijuana Policy Project, *Cannabis Tax Revenue in States that Regulate Cannabis for Adult Use*, <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/> (last visited Sep 11, 2023) ("Through the end of 2022, states have reported a combined total of more than \$15 billion in tax revenue from legal, adult-use cannabis sales. In 2022, legalization states generated more than \$3.77 billion in cannabis tax revenue from adult-use sales. In addition to revenue generated for statewide budgets, cities and towns have also generated hundreds of thousands of dollars in new revenue from local adult-use cannabis taxes.").

Economically, rescheduling to Schedule III will alleviate restrictions of Section 280E of the Internal Revenue Code, allowing cannabis-related businesses to take ordinary business deductions— just like every other American business. Economists estimate that this will save \$1.8 billion per year by shifting cannabis companies to a standard federal corporate rate of 21% versus the up to 80% effective tax rate they face now.⁴ The cannabis industry generated an estimated \$30 billion dollars in sales revenue in 2022 and is projected to generate over \$71 billion by 2030.⁵ States have generated millions of dollars in tax revenue, allowing for improvements like community centers, education and school and road construction. A 2023 report estimated that the cannabis industry supports more than 417,000 full-time equivalent jobs.⁶ Cannabis no longer being required to follow Section 280E will serve to make this industry profitable while safeguarding hundreds of thousands of jobs and protecting the health and safety of American consumers. As governors, we might disagree about whether recreational cannabis legalization or even cannabis use is a net positive, but we agree that the cannabis industry is here to stay, the states have created strong regulations, and supporting the state-regulated marketplace is essential for the safety of the American people.

Rescheduling Cannabis to a Schedule III protects Americans from more dangerous drug use. Products sold in the state-legal cannabis marketplace are significantly safer than myriad alternatives, including opioids. Cannabis access is also associated with reduced rates of opioid use and abuse, opioid-related hospitalizations, opioid-related traffic fatalities, opioid-related drug treatment admissions, and opioid-related overdose deaths.⁷ While opioids killed more than 80,000 people last year,⁸ cannabis use killed no one.⁹ In our 50 states, we have seen first-hand the devastation born by the opioid epidemic. Families torn apart, kids left without fathers and mothers, jobs lost forever, communities in tatters. Thoughts and prayers are not enough. We need real solutions to our addiction epidemic.

Regulated cannabis is a safer alternative, but not all cannabis is regulated. Rescheduling cannabis will ensure more regulation and oversight of cannabis use and decrease the use of unregulated cannabis and hemp products. We've seen unregulated, untested, intoxicating

4 Press Release, Whitney Economics, Economic Analysis Indicates Cannabis Industry Paid \$1.8 Billion in Excess Taxes in 2022 (May 8, 2023), <https://www.prnewswire.com/news-releases/economic-analysis-indicates-cannabis-industry-paid-1-8-billion-in-excess-taxes-in-2022-301817848.html> (“280E reform would increase operator profitability, increase cannabis employment and increase economic activity by \$35.2 billion over a 10-year period.”).

5 Press Release, New Frontier Data, U.S. Cannabis Sales Could Total \$71B in 2030 Without Federal Legalization (Mar. 22, 2023), <https://www.globenewswire.com/en/news-release/2023/03/22/2632475/0/en/U-S-Cannabis-Sales-Could-Total-71B-in-2030-Without-Federal-Legalization.html>.

6 2023 Vangst Jobs Report, VANGST (Apr. 10, 2023), <https://vangst.com/blog/2023-jobs-report>.

7 NORML, *FACT SHEET: Relationship between Marijuana and Opioids*, <https://norml.org/marijuana/fact-sheets/relationship-between-marijuana-and-opioids/> (last visited Sept. 8, 2023) (“Cannabis access is associated with reduced rates of opioid use and abuse, opioid-related hospitalizations, opioid-related traffic fatalities, opioid-related drug treatment admissions, and opioid-related overdose deaths.”).

8 *Provisional Data Shows U.S. Drug Overdose Deaths Top 100,000 in 2022*, CTNS. FOR DISEASE CONTROL AND PREVENTION (May 18, 2023), <https://blogs.cdc.gov/nchs/2023/05/18/7365/>.

9 U.S. Drug Enf't Admin, *Drugs of Abuse: A DEA Resource Guide* at 92 (2022), https://www.dea.gov/sites/default/files/2022-12/2022_DOA_eBook_File_Final.pdf (“No deaths from overdose of marijuana have been reported.”).

hemp products being sold to kids in convenience stores. Too often these unregulated hemp products replicate well-known children’s candy brands.¹⁰ Fentanyl has been detected in unregulated marijuana products,¹¹ and tests on these products have resulted in high levels of heavy metals,¹² unwanted contaminants,¹³ and extraordinarily high THC content.¹⁴ Injuries and deaths have also been attributable to the unregulated market.¹⁵ This past May, NGA released a publication on youth mental health and substance abuse.¹⁶ There, we highlighted that “in a time when the drug supply is more lethal than ever, preventing substance abuse and mitigating risk among youth is a critical bipartisan priority.” We now see that regulated cannabis is safer than opioids, safer than the unregulated illicit cannabis market, and safer than the hemp-derived THC products that our kids can buy at will and rescheduling cannabis further supports the state regulated industry.

The state-regulated marketplace has numerous protections in place, including age verification, packaging and labeling standards, testing requirements, and warning symbols or statements. The state-regulated market tracks products from seed to sale, ensuring they are not illegally diverted into the hands of children or adulterated with dangerous additives. There are rules against marketing to children and strict serving size and package limits. The untaxed illicit

10 Mary Whitfill Roeloffs, *FTC Reprimands Companies Selling Delta-8 THC In Packages Resembling Regular Snacks*, FORBES (Jul. 5, 2023), <https://www.forbes.com/sites/maryroeloffs/2023/07/05/ftc-reprimands-companies-selling-delta-8-thc-in-packages-similar-to-regular-snacks> (The Federal Trade Commission has called out companies in six states for selling Delta-8 THC, a psychoactive substance sourced from hemp, in packaging “almost identical” to children’s snacks like Doritos, gummy bears and Nerds candy.).

11 Andreas Copes & Stephanie Stahl, *Heroin, fentanyl found in THC, CBD edibles in Montgomery County*, CBS NEWS (Feb. 25, 2023), <https://www.cbsnews.com/philadelphia/news/heroin-fentanyl-found-in-cbd-edibles-in-montgomery-county/>; Marlene Lenthang, *Student, 16, overdoses on suspected fentanyl-laced marijuana at Connecticut high school, police say*, NBC NEWS (Feb. 8, 2022), <https://www.nbcnews.com/news/us-news/16-year-old-student-overdoses-fentanyl-laced-marijuana-connecticut-hig-rcna15302>.

12 Aria Bendix, *Marijuana users found to have lead and another heavy metal in their blood and urine*, NBC NEWS (Aug. 30, 2023), <https://www.nbcnews.com/health/health-news/marijuana-users-lead-heavy-metal-in-blood-urine-rcna102431> (“Compared to people who didn’t use marijuana or tobacco, marijuana users had 27% higher levels of lead in their blood, according to a new study.”).

13 *E. Coli, Heavy Metals, Copyright Infringement, and 100 Percent Failure Rate: A Look at New York City’s Illicit Cannabis Dispensaries*, NEW YORK MEDICAL CANNABIS INDUSTRY ASSOCIATION (Nov. 2022), <https://leafly-cms-production.imgix.net/wp-content/uploads/2022/11/30124236/Leafly-NYC-Illicit-Cannabis-Market.pdf> (Lab tests conducted on inhalable and edible cannabis products from 20 unlicensed vendors “revealed the presence of several harmful contaminants, such as E. coli, pesticides, heavy metals, and salmonella in 40 percent of the illegal products purchased, including vapes. Many of the products tested did not contain the amount of THC advertised on the label and in one case, featured double the amount of listed THC.”); Kyle Jaeger, *9 In 10 Illicit Marijuana Samples Contained Pesticides In ‘Striking Contrast’ To Regulated Products, Study Finds*, MARIJUANA MOMENT (Aug. 31, 2023), <https://www.marijuanamoment.net/9-in-10-illicit-marijuana-samples-contained-pesticides-in-striking-contrast-to-regulated-products-study-finds/>.

14 *The BFG—3000 MG Delta 9 THC Gummy*, BINOID, <https://www.binoidcbd.com/collections/delta-9-thc-products/products/delta-9-thc-gummy-3000mg-bfg> (last visited Sept. 11, 2023); *Very Berry—Live Resin 3500 mg Gummies*, CHAPO, <https://chapoextrax.com/product/very-berry-live-resin-3500mg-gummies/> (last visited Sept. 11, 2023); *Edibles*, COASTAL HEMP CO., <https://coastalhemp.co/collections/hemp-edibles> (last visited Sept. 11, 2023) (listing several intoxicating hemp products with more than 1,000 mg THC per package).

15 *The Key to Consumer Safety: Displacing the Illicit Cannabis Market*, NATIONAL CANNABIS INDUSTRY ASSOCIATION (Jan. 2020), https://thecannabisindustry.org/wp-content/uploads/2020/01/NCIA-Safe-Vaping-WP_Jan27_v3.pdf (“In addition to unregulated additives like vitamin E acetate [responsible for the sometimes-fatal e-cigarette, or vaping, product-use associated lung injury (EVALI)], pesticides and heavy metals have been found in dangerously high amounts in illicit market products. It appears, based on these reports, that more than 2,600 people have become ill because of these counterfeit cartridges.”).

16 *Youth Mental Health and Substance Use*, National Governors Association (May 8, 2023), <https://www.nga.org/publications/youth-mental-health-and-substance-use/>.

market and intoxicating hemp-derived products share none of those safeguards, but they compete with the state-regulated marketplace—and even threaten to dismantle it. Thus, the undersigned see that protecting the state-regulated marketplace by making sure that regulated companies are able to operate efficiently is a public safety imperative.

There is, and will continue to be, a significant consumer demand for cannabis. That fact will not change regardless of the public policy choices that we make. If people want the product, they will procure the product, as they always have. So, it seems obvious and sensible to us to make cannabis as safe as it can be for adult consumers while simultaneously protecting our children. The state-regulated marketplace does just that. If the state-legal marketplace doesn't survive, then we will see unsafe products on every street corner.

As governors, we have a duty to protect our communities. As adults, we have a duty to protect children. As Americans, we have a duty to protect our country. This is the greatest nation on earth. It's time to act like it by promoting safe products, taking enforcement actions against dangerous products and individuals or organizations that violate state law and focusing on the real problems that we face as a community—with opioid use at the top of the list.

Protecting regulated markets is also a win for state's rights. This decision by a leading federal health agency comes on the heels of 38 states creating their own state markets and complimentary regulatory systems. In some cases, these state regimes have thrived for more than a decade, and this recommendation by FDA is a real testament to their success. It's a signal that FDA and the Department of Health and Human Services have faith in state regulators and the regulations that they have promulgated to keep citizens safe. It's exactly what they envisioned in a "more perfect union." Plainly, supporting the state-regulated cannabis industry makes sense.

Thank you for your leadership on this important topic.

Sincerely,



Governor Jared Polis
State of Colorado



Governor JB Pritzker
State of Illinois



Governor John Bel Edwards
State of Louisiana



Governor Wes Moore
State of Maryland

Handwritten signature of Phil Murphy in blue ink.

Governor Phil Murphy
State of New Jersey

Handwritten signature of Kathy Hochul in blue ink.

Governor Kathy Hochul
State of New York