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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
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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."

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

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

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.