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August 25, 2017

Virginia State Crime Commission
Patrick Henry Building
1111 East Broad Street, Suite B306
Richmond, Virginia 23219

VIA ELECTRONIC SUBMISSION
vsccinfo@vscc.virginia.gov

Re: Virginia State Crime Commission—Decriminalization of Simple Possession of Marijuana

Dear Commission Members:

In response to the Virginia State Crime Commission’s call for comments on the decriminalization of simple possession of marijuana, please accept The Rutherford Institute’s¹ analysis and comments in support of decriminalization.

The federal government’s “War on Drugs” is a failure

The Virginia State Crime Commission’s willingness to consider decriminalizing simple possession of marijuana is particularly significant, coming at a time when a growing number of states are already moving to legalize or decriminalize marijuana possession² and coinciding as it does with polls indicating that increasing numbers of Americans believe the federal government’s so-called “War on Drugs”—specifically marijuana—to be a failure.

Indeed, after more than 40 years and at least \$1 trillion, America’s “war on drugs” ranks as the longest-running, most expensive and least effective effort by the American

¹ The Rutherford Institute is a national, non-profit civil liberties organization that specializes in legal matters associated with constitutional rights.

² Marijuana has already been legalized in Alaska, Colorado, Oregon, Washington state and Washington D.C, and has been decriminalized in California, Connecticut, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, and Ohio. Source: Stephen Stine, “Marijuana Possession: Laws & Penalties,” *Criminal Defense Lawyer*, <http://www.criminaldefenselawyer.com/crime-penalties/federal/Marijuana-Possession.htm>.

government.³ Four decades after Richard Nixon declared that “America’s public enemy No. 1 in the United States is drug abuse,”⁴ drug use continues unabated. Despite the overwhelming evidence that the current method of drug prohibition simply is not working, our federal, state and local governments continue to put forth policies that pose a great danger to American citizens while exhausting police resources.

Just consider: every 30 seconds, someone in the U.S. is arrested for violating a marijuana law.⁵ Today, roughly half of all drug arrests are for simple marijuana possession.⁶ Police arrested over 750,000 persons for marijuana possession in 2010, far more than the number of people arrested for violent crimes.⁷ Indeed, the rabid enforcement of drug laws has led to the prison population increasing six fold since 1970, to over two million inmates,⁸ half a million of whom are there for nonviolent drug offenses.⁹

This doesn’t even touch on the racial¹⁰ and economic¹¹ disparities in the government’s war on drugs.

The war on drugs is tied to historically racist policies

Despite the government’s current fanaticism about marijuana, America has not always been at war over the cannabis plant. In fact, in 1619, all farmers of the Jamestown colony here in Virginia were *required* to grow cannabis for rope and other military purposes. Over the next 200 years, a variety of laws required hemp harvesting. In some cases, landowners could be imprisoned for neglecting their duty to grow hemp. Oftentimes, a surplus of hemp could be used as legal tender, even for paying taxes. In 1850, there were 8,327 hemp plantations in the US.¹²

³ Stephen Gutwillig, “America needs strategy to exit its longest war,” *Daily News*, June 16, 2011, http://www.dailynews.com/opinions/ci_18294627 (accessed April 24, 2012).

⁴ Charles M. Blow, “Drug Bust,” *NY Times* (June 10, 2011), http://www.nytimes.com/2011/06/11/opinion/11blow.html?_r=1.

⁵ [Uniform Crime Reports, Federal Bureau of Investigation](http://www.fbi.gov/ucr/crimes) and <http://www.drugsense.org/cms/wodclock>.

⁶ Collins, McDonald, and Gann, “How Common are Marijuana Arrests?” Last modified January 3, 2012. Accessed April 24, 2012. <http://cmgesqblog.com/?p=429>.

⁷ Collins, McDonald, and Gann, “How Common are Marijuana Arrests?” Last modified January 3, 2012. Accessed April 24, 2012. <http://cmgesqblog.com/?p=429>.

⁸ Stephen Gutwillig, “America needs strategy to exit its longest war,” *Daily News*, June 16, 2011, http://www.dailynews.com/opinions/ci_18294627 (accessed April 24, 2012).

⁹ Stephen Gutwillig, “America needs strategy to exit its longest war,” *Daily News*, June 16, 2011, http://www.dailynews.com/opinions/ci_18294627 (accessed April 24, 2012).

¹⁰ “Drug Sentencing and Penalties,” ACLU, <http://www.aclu.org/criminal-law-reform/drug-sentencing-and-penalties>.

¹¹ Bruce Western, “Decriminalizing Poverty,” *The Nation* (Dec. 27, 2010), <http://www.thenation.com/article/157007/decriminalizing-poverty>.

¹² Pete Guither, “Why is Marijuana Illegal?” Accessed October 12, 2011. <http://www.drugwarrant.com/articles/why-is-marijuana-illegal/>.

It was only later, during the early 20th century, that the government embarked on an all-out assault on marijuana, largely due to corporate lobbying that favored the production of cotton over hemp and racist policies that tied Hispanics and blacks to marijuana use.

The war on drugs constitutes one of the most racially discriminatory government policies in recent decades

The government's war on drugs constitutes one of the most racially discriminatory government policies in recent decades, with African-Americans constituting its greatest casualties.

Moreover, marijuana possession laws are disproportionately enforced against African-Americans, who are 3.7 times more likely than whites to be arrested for using marijuana. This is so despite the fact that both groups use marijuana at similar rates.¹³ The accumulation of marijuana possession convictions alongside other minor nonviolent offenses can result in a skewed criminal history that results in a sentences that are disproportionate to the nature and severity of the offense. This only exacerbates the problem of disproportionate incarceration of African-Americans that exists not only in Virginia but throughout the United States.¹⁴

As the ACLU has reported, "Despite the fact that whites engage in drug offenses at a higher rate than African-Americans, African-Americans are incarcerated for drug offenses at a rate that is 10 times greater than that of whites." Moreover, a November 2011 study by researchers at Duke University found that young blacks are arrested for drug crimes *ten* times more often than whites.¹⁵ Likewise, a 2008 study by the ACLU concluded that blacks in New York City were five times more likely to be arrested than their white counterparts for simple marijuana possession.¹⁶ Latinos were three times more likely to be arrested.¹⁷ This disproportionate approach to prosecuting those found in possession of marijuana is particularly evident in California, where African-American marijuana offenders were imprisoned 13 times as much as non-blacks in 2011.¹⁸ In fact,

¹³ Jesse Wegman, "The Injustice of Marijuana Arrests," *The New York Times* (July 28, 2014), <https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>.

¹⁴ Ashley Nellis, "The Color of Justice: Racial and Ethnic Disparity in Sentencing in State Prisons," *The Sentencing Project* (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

¹⁵ Maia Szalavitz, "Study: Whites More Likely to Abuse Drugs Than Blacks." *Time*, November 7, 2011. <http://healthland.time.com/2011/11/07/study-whites-more-likely-to-abuse-drugs-than-blacks/> (accessed April 24, 2012).

¹⁶ Jacob Sullum, "The War on Drugs: What's Race Got to Do With It?" *Reason* (April 6, 2009), <http://reason.com/blog/2009/04/06/the-war-on-drugs-whats-race-go> (accessed April 24, 2012).

¹⁷ Jacob Sullum, "The War on Drugs: What's Race Got to Do With It?" *Reason* (April 6, 2009), <http://reason.com/blog/2009/04/06/the-war-on-drugs-whats-race-go> (accessed April 24, 2012).

¹⁸ Center on Juvenile and Criminal Justice, Last modified November 2011. Accessed April 24, 2012. http://cjcj.org/files/Misdemeanor_marijuana_arrests.pdf.

between 1990 and 2010, there was a 300% surge in arrests for marijuana possession for nonwhites.¹⁹

The war on drugs has done nothing to resolve the issue of drug addiction

Despite 40 years of military funding to eradicate foreign drug supplies, increased incarceration rates, and more aggressive narcotics policing, the war on drugs has done nothing to resolve the issue of drug addiction. A European Union Commission study determined that “global drug production and use remained largely unchanged from 1998 through 2007.”²⁰ The National Survey on Drug Use and Health revealed that as recently as 2005, 58% of the public found marijuana readily available, with 50% of 12 to 17 year olds declaring it easy to get.²¹ In fact, the only things that have changed are that drugs are cheaper and more potent,²² there are more people in prison, and the government is spending more taxpayer money in its futile attempts at curbing marijuana use.

Decriminalization actually results in reduced drug usage

Moreover, for those who fear that de-emphasizing marijuana prosecutions might lead to an increase in drug use, studies show the contrary to be the case—that decriminalization actually results in reduced drug usage. For example, in 2001, Portugal abolished all criminal penalties for the possession of illegal drugs for personal use, including for hard drugs such as cocaine and heroin. Within five years illegal drug use amongst teenagers had dropped, as had the rate of HIV infection via sharing dirty needles. Attempts to seek therapy for addiction had also more than doubled. Rather than putting people in jail, the Portuguese authorities brought drug offenders before panels of social workers and psychologists who would offer help to the individuals, although the help could be refused without criminal penalty. As a Cato Institute study documenting the improvement of Portuguese society since the decriminalization of drugs concluded, “Judging by every metric, decriminalization in Portugal has been a resounding success.”²³

The Commonwealth should set an example for the rest of the nation

¹⁹ Center on Juvenile and Criminal Justice, Last modified November 2011. Accessed April 24, 2012. http://cjcj.org/files/Misdemeanor_marijuana_arrests.pdf.

²⁰ Peter Hakim, “Rethinking US Drug Policy.” Last modified February 2011. Accessed April 24, 2012. http://www.thedialogue.org/uploads/Documents_and_PDFs/Documents_and_PDFs_2/Rethinking_US_Drug_Policy.pdf. p. 4.

²¹ Jon Gettman, “Lost Taxes and Other Costs of Marijuana Laws,” <http://www.drugscience.org/Archive/bcr4/3Availability.html>.

²² Peter Hakim, “Rethinking US Drug Policy.” Last modified February 2011. Accessed April 24, 2012. http://www.thedialogue.org/uploads/Documents_and_PDFs/Documents_and_PDFs_2/Rethinking_US_Drug_Policy.pdf. p. 4.

²³ Maia Szalavitz, “Drugs in Portugal: Did Decriminalization Work?” *Time* (April 26, 2009), <http://www.time.com/time/health/article/0,8599,1893946,00.html#ixzz1tYF7Wg3G>.

By decriminalizing simple possession of marijuana, the Commonwealth of Virginia has an opportunity to show the rest of the country that it is progressive enough to act on Americans' changing attitudes towards marijuana possession, recognizing that the nation's drug war is a failure and that a new direction is sorely needed. A growing number of law enforcement officials and national organizations are also calling for an end to the drug wars, including the US Conference of Mayors,²⁴ the Global Commission on Drug Policy, which includes former UN Secretary General Kofi Annan, former US Secretary of State George Schultz, and former presidents of Mexico, Colombia, and Brazil,²⁵ and the NAACP.

The Costs of Enforcement

At the very least, marijuana should not be a primary focus of law enforcement. Marijuana decriminalization not only relieves a burden on those who are punished for possessing a substance substantially less dangerous than alcohol or tobacco,²⁶ but also frees up law enforcement to prevent and solve crimes that have a real impact on the lives of the citizens of the Commonwealth.

Consider that there were more arrests for marijuana possession in the United States in 2011 than for all violent crimes put together.²⁷ At a time when less than half of all violent crimes and only about 20% of all property crimes are solved,²⁸ law enforcement needs all the resources available to address these crimes, not dedicating time and energy to stopping mere possession of a substance that a majority of Americans believe ought to be legalized.²⁹ When California decriminalized marijuana, it reduced the costs of marijuana enforcement by 74%.³⁰ Marijuana decriminalization not only relieves a burden on those who are punished for possessing a substance substantially less

²⁴ Jonah Engle, "40 Years of a Pointless, Tragic Drug War -- But As Feds Crack Down, Reformers Fight Back," *Alternet* (December 27, 2011),

http://www.alternet.org/drugs/153585/40_years_of_a_pointless_tragic_drug_war_-_but_as_feds_crack_down_reformers_fight_back/ (accessed April 24, 2012).

²⁵ Stephanie Condon, "NAACP calls for end to 'war on drugs,'" *CBS News* (July 27, 2011), http://www.cbsnews.com/8301-503544_162-20084203-503544.html (accessed April 24, 2012).

²⁶ Alan Budney, Roger Roffman, Robert Stephens, and Denise Walker, "Marijuana Dependence and Its Treatment," *U.S. National Institutes of Health, PubMed Central* (December 2007), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2797098/pdf/ascp-04-1-4.pdf>.

²⁷ Katy Hall and Chris Spurlock, "Marijuana Possession Arrests Exceed Violent Crime Arrests (INFOGRAPHIC)," *The Huffington Post* (Jan. 17, 2013), http://www.huffingtonpost.com/2013/01/17/marijuana-possession-arrests_n_2490340.html.

²⁸ U.S. Dept. of Justice, Fed. Bur. of Inv., Criminal Justice Information Services Division, "Clearances," June 17, 2013, <https://ucr.fbi.gov/crime-in-the-u.s./2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/clearances>.

²⁹ Abigail Geiger, "Support for marijuana legalization continues to rise" *Pew Research Center* (Oct. 12, 2016), <http://www.pewresearch.org/fact-tank/2016/10/12/support-for-marijuana-legalization-continues-to-rise/>.

³⁰ Eric W. Single, "The Impact of Marijuana Decriminalization: An Update," *Journal of Public Health Policy*, Vol. 10, No. 4 (Winter 1989), p. 462, http://www.michelepolak.com/200spring11/Weekly_Schedule_files/Single.pdf

dangerous than alcohol or tobacco, but also frees up law enforcement to prevent and solve crimes that have a real impact on the lives of the citizens of the Commonwealth.

It's time to revisit our drug policies and laws, and decriminalizing simple possession of marijuana would be a modest and appropriate step in the right direction. Jeffrey Miron, an economics professor at Harvard, has calculated that marijuana prohibition costs the Commonwealth \$246 million a year, including the process of arrest, prosecution, and incarceration of marijuana users.³¹

Imagine what could be done with those funds were freed up and used to address other trouble spots in our Commonwealth such as homelessness, poverty, hard-core drug dealing and gang activity. Ultimately, decriminalizing simple possession of marijuana would significantly free up resources for law enforcement to pursue serious crimes, increase economic opportunity by destigmatizing simple possession,³² and ameliorate racial disparities in the enforcement of marijuana law.

Clearly, the War on Drugs has been a decades-long failure, and marijuana decriminalization is a long-overdue and necessary step towards a more humane and rational drug policy.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is fluid and cursive, with a large, sweeping flourish over the last name.

John W. Whitehead
President

The Rutherford Institute

³¹ Lisa Provence, "Reefer madness? Copter and SWAT team weeded out 2 plants on their property," *The Hook*, <http://www.readthehook.com/101282/2-plants-citizen-terrorized-swat-team-pot-raid> (accessed April 24, 2012).

³² Currently, a marijuana conviction can have numerous negative repercussions even if no jail time resulted from the offense. In many cases, a marijuana conviction can harm a person's ability to get a job, get insurance, a mortgage, public housing, or student financial aid. See Jesse Wegman, "The Injustice of Marijuana Arrests," *The New York Times* (July 28, 2014), <https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>.