

TESTIMONY OF HERRICK FOX TO SENATE JUDICIARY COMMITTEE ON H.548

April 14, 2022

Dear Members of the Senate Judiciary Committee,

Thank you for the opportunity to provide testimony on H.548 - An act relating to miscellaneous cannabis establishment procedures. I would like to offer the Committee information and perspectives on the bill provisions that would amend the statutory limits in 7 V.S.A. §881 on tetrahydrocannabinol (THC) content in cannabis products for sale in Vermont.

Based on my experience in the hemp/CBD industry since 2018 and my prior 15 years of experience in policymaking with the US Department of Agriculture, my assessment is that the 30% THC potency cap proposed for flower, as well as the 50 mg cap per container currently in the statute to be amended by this bill, are likely to promote illicit cannabis production, undermine at least 53% of Vermont's adult-use market given the higher potency available in neighboring states, and particularly disadvantage small and social-equity businesses throughout many sectors of Vermont's agricultural economy—not just cannabis. These are all outcomes that appear contrary to legislative intent and the public interest.

Given these issues, I encourage the Committee to revise H.548 to remove the potency cap on flower, and to increase the caps currently in 7 V.S.A. §881 to 100 mg per container or more.

The three main points of my testimony are these:

1. A THC potency cap on adult-use cannabis flower places farmers at unnecessary risk because THC levels depend on numerous genetic, environmental and agronomic variables beyond growers' control, and because THC testing of flower is fraught with statistical error and other challenges that result in false findings of non-compliance.
2. A 50-milligram cap on packages of edibles will undermine at least 53% of Vermont's adult-use market because edibles containing 100 milligrams or more per package are commonly available in legal markets in neighboring states.
3. I am unaware of conclusive evidence showing the public health benefit of a potency cap on flower, or of a cap of 50 milligrams per package of edibles as opposed to 100 mg. Thus a choice to establish such caps can be considered arbitrary, and problematic given the impacts on Vermont's adult-use market in general and on small and underserved businesses in particular. It should be noted that such caps also give a competitive advantage to the large multi-state operators that dominate markets in neighboring states—also contrary to the Legislature's apparent intent in establishing Vermont's adult-use market.

It is not the purpose of my testimony to opine on the merit of THC caps in general, or on specifics pertaining to high-potency concentrates (the impacts of which are different from flower and edibles), but rather to focus solely on potency caps on flower and on the low 50-milligram cap on packages of

edibles relative to the higher potencies commonly available in edibles sold through the legal markets of other states. Nevertheless, in general, I would caution against drawing inferences based on anecdotal reports concerning the health impacts of any cannabis products. Such advocacy sometimes mistakes correlation for causation, or overlooks comparisons against potentially more severe effects of other regulated products like alcohol and tobacco, or results from emotional reactions to individual tragedies. I would further point out that such advocacy sometimes derives from preconceived stereotypes that have been the cause of racial injustice and other inequities associated with decades of prohibition, which the Legislature so laudably intends to repair in Vermont's adult-use program.

For the record, my name is Herrick Fox, and I and my wife, Jen Daniels, reside in Colchester with our three teenage children. My knowledge of these issues derives from my experience as CEO and Co-founder of Meristem Farms LLC, a Vermont-licensed hemp farming and production company that has been engaged in commercial farming, manufacturing, and marketing of hemp products since 2018. As Committee members may know, commercial production of hemp CBD products involves essentially the same activities as those for marijuana (both are varieties of the species *Cannabis sativa* L., and the cultivation, processing and manufacturing of hemp for CBD products is essentially the same as that for marijuana). I also have a national perspective on these issues as co-chair of the Government Affairs Committee for the National Industrial Hemp Council.

I would add that I also appreciate the challenges faced by policymakers in addressing such complex issues. Prior to founding Meristem I served for 15 years in a variety of senior policy and management roles with the US Department of Agriculture, mostly in agricultural capacity-building, rulemaking and legislative affairs, and including assignments in the Office of the Under Secretary and with the US Senate Agriculture Committee.

I will now offer some details on these issues to the committee:

1. The 30% potency cap on flower would incentivize illicit activity and put licensed growers at undue risk—especially the small cultivators that the Legislature's intent so laudably supports:
 - As we have learned in hemp, the production of THC is highly variable in all cannabis plants, due to numerous genetic, environmental and agronomic variables beyond the control of growers. This is true despite decades of effort to breed hemp varieties that do not exceed the legal threshold for THC, and this is without a doubt the single greatest risk deterring both farmers and other businesses from engaging (or remaining) in hemp production. There has been little or no such breeding for reduced THC potency in marijuana.
 - THC testing is fraught with statistical error and other challenges that commonly result in false findings of non-compliance, and there is no way to mitigate THC concentration in flower products. This only exacerbates the risk and confusion.
 - Given the high costs associated with licensing marijuana cultivation, Vermont cannabis growers—all likely to be small businesses under current law—will commonly find the

financial risk of exceeding a potency limit to be untenable and uninsurable. Some will probably just divert their ‘hot’ crops (and maybe all their crops) to the illicit market instead.

2. The 50-milligram limit on THC in packages will preclude the viability of edible cannabis products, undermine 53% of Vermont’s adult-use market, and thus incentivize illicit activity while particularly disadvantaging small and social-equity businesses.
 - The state’s 13 million annual visitors are expected to account for the large majority of Vermont’s adult-use market, 53% of which is expected to be in edibles.
 - In most other states, including Maine, Massachusetts and New York, a package of cannabis edibles containing 100 mg of THC or more can be purchased commonly for \$25-\$30 at retail, be it medical- or adult-use. This can be observed by visiting the online menus of many (and probably most if not all) cannabis retailers in these states.
 - However, cannabinoid ingredients—whether CBD or THC—represent only 3% to 6% of the total production cost of an edible, sometimes even less. Actually, the cost of the package is by far the largest cost of producing our hemp products, ranging from 25% to 45%. I believe this is all on par with what other small businesses spend;
 - Therefore, Vermont cannabis producers will spend the same or more to produce edibles, especially if they are to pay living wages to employees and favorable pricing for Vermont-made food ingredients, but visitors will demand a much lower price for an edible with only half the potency they can get at home. Consumers who reside in Vermont will be incentivized to make their purchases in other states as well.
 - This will severely impact margins and viability, particularly for small businesses who lack the economy of scale to reduce unit costs. Some will be drawn to the illicit market instead.
3. The impacts of the 50-milligram cap on cannabis edibles will also restrict access to an important value-added opportunity for Vermont producers of other ingredients, particularly the many small businesses and family farms that produce high-quality dairy, maple, honey, and other hallmarks of Vermont’s agricultural economy and brand.
4. Lastly, the potential added benefit to public health and safety of a potency cap on flower, or of a 50-milligram limit on edibles relative to the 100-milligram concentrations common in other states, is unclear at best:
 - All adult-use cannabis products should be kept out of the reach of children regardless of potency, just like alcohol and tobacco.
 - As for adults, a consumer who is intent on consuming an excessive quantity of THC is not likely to be deterred by the need to consume multiple packages: they’ll just end up buying more packages, increasing waste and reducing the competitiveness of Vermont products. Consumer education is a more effective means of preventing overconsumption.
 - Concerning flower, it’s important to keep in mind that one cannot ‘get high’ from consuming raw flower. The ‘high’ produced by the THC comes only when the THC is decarboxylated, such as by smoking it or other high-heat application.

- I am unaware of conclusive evidence showing the public health benefit of a potency cap on flower, or of a cap of 50 milligrams per package of edibles as opposed to 100 mg. Thus a choice to establish such caps can be considered arbitrary, and problematic given the impacts on Vermont's adult-use market in general and on small and underserved businesses in particular. It should be noted that such caps also give a competitive advantage to the large multi-state operators that dominate markets in neighboring states, contrary to the Legislature's apparent intent in establishing Vermont's adult-use market.

Thank you again for the opportunity to provide testimony to the Committee. A few complex details like these do remain in need of attention, but thanks in large part to the thoughtful and courageous work of this Legislature I think our state is well on its way to becoming a national model for a safe, viable and equitable adult-use cannabis market.

Respectfully,

A handwritten signature in black ink, appearing to read 'Herrick Fox', written in a cursive style.

Herrick Fox