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Senator Kesha Ram Hinsdale, Chair
Senator Alison Clarkson, Vice Chair
Senator Randy Brock
Senator Ann Cummings
Senator Wendy Harrison, Clerk
Senate Committee on Economic Development, Housing and
General Affairs
Vermont General Assembly

Re: H.612 – Regulation of Cannabis Advertising Is Constitutional and Necessary

Dear Chair Ram Hinsdale, Vice Chair Clarkson, and Senators Brock, Cummings and Harrison:

On behalf of Physicians for Healthy Communities, I write to respond to the arguments submitted by my legal colleague Dave Silberman, and by others, that regulation of cannabis advertising is unconstitutional and unnecessary.

Every court that has addressed the question has ruled that strict state regulation of cannabis advertising is constitutional. The court decisions uphold strict state regulation of cannabis advertising even where state law authorizes commercial sale of cannabis. Because of the enormous profits to be gained through cannabis sales, the industry has thoroughly litigated this issue. The industry has lost every time. I attach the most recent decision, decided just three months ago. If you are interested, I can provide a detailed explanation of this decision and the cases it summarizes. Suffice it to say that where sale of a product is unlawful under federal law, no person has any constitutional right to advertise its sales of that product regardless of whether state law authorize sale of that product. Where the activity is unlawful under federal law, the right of commercial free speech simply does not apply.

Of course, Vermont law does not ban cannabis advertising. Under the caselaw, a complete ban would be constitutional. Because the state does allow advertising— while regulating it to protect against marketing to children, deceptive marketing, and marketing that suggests that cannabis has therapeutic effects—Attorney Silberman will have a steep uphill climb if he brings the suit he has threatened.

Strict regulation of cannabis advertising is necessary. Attorney Silberman and others argued that they should be free to advertise the same way that other businesses advertise, and that New Yorkers are stealing their sales. According to the Vermont Medical Society and the Vermont Department of Health, cannabis use presents serious public health

hazards, including psychosis and suicidality. That differentiates it from the marketing of other goods and services. The dangers includes harm to persons who have no choice in the matter—fetuses and children who are breast-fed. Vermont already has the highest rate of cannabis use disorder in the nation. Despite their complaints about restrictions on their advertising, cannabis sellers have already developed a market that is, if anything, too strong.

If Vermonters are traveling to New York to purchase cannabis, in response to New York advertisements, the answer here—as in many areas—is not to lower Vermont’s standards to those of New York.

I think it is worth noting that the risks to Vermont are not just to public safety. The risks are also financial. Cannabis induced psychosis/schizophrenia is an increasing financial burden on the state. We are still working on the numbers so we can get them into a form that is understandable and professional. The data shows cause-and-effect connection. Treatment is very expensive.

Respectfully submitted,

James A. Dumont

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for Physicians for Healthy Communities