

Dear Senators:

The 50+ members of the Vermont Cannabis Action Fund applaud your efforts to address flaws in the current regulatory structure governing cannabis in Vermont, and particularly your focus on aligning Vermont's laws with the regional and national consensus.

Please consider the following additional testimony in your deliberations.

### **10mg Edibles Are Not “High Potency”**

For edible products, 10mg of THC is not a "high" dose; it is a "standard" dose.

Vermont is one of just 3 states that limits edibles to 5mg THC per serving; every other state with a regulated cannabis market has recognized that 10mg is the appropriate limit.

“High-dose” edibles are generally understood to be 25mg THC and higher, reserved for the medical market. The incremental risk associated with accidental ingestion of a 10mg dose vs. a 5mg dose is negligible.

Increasing the per-dose limit will align Vermont law with the regional and national consensus, and bring consumers back to Vermont's regulated market who have been purchasing from New York stores and “gray market” online e-tailers. We implore you to harmonize Vermont's edibles dosage limit with the national consensus of 10mg per serving.

### **2-Year Product Registrations Was the Compromise Position; the CCB Previously Agreed to 2 Years *In Writing***

Vermont is an extreme outlier with respect to product registration; only one other state requires cannabis products to be individually registered. The cannabis industry believes that product registration is highly burdensome, wholly unnecessary, and should be eliminated entirely. The proposed change to a 2-year registration period *was already the compromise position that was negotiated and agreed with the CCB.*

We were surprised by the CCB's recent change in position regarding 2-year product registrations. Extending the registration period was previously discussed as a reasonable compromise to reduce administrative burdens on licensees. Vermont's current annual registration system already creates significant operational challenges for small businesses, and frequent renewals add additional costs and significant delays (often 3+ weeks) that make it harder for licensees to bring products to market.

For that reason, the industry has supported a two-year registration period as a compromise and a practical step toward improving the efficiency of the system. This position was reflected in prior written communication from Gabe Gilman to the Cannabis Retailers Association indicating that the CCB had “no concerns” with establishing two-year registrations.

### **Prior Restraint on Speech is Unconstitutional; No Other State Has a Pre-Approval Requirement**

Vermont is the only state in the nation to subject commercial speech by cannabis businesses to prior restraint, and for good reason: it is a gross violation of protected free speech under both the 1<sup>st</sup> Amendment and Article 13 of the Vermont Constitution, as well as a misallocation of resources. *Eliminating pre-approval also advances your goal of regional and national harmonization.*

Some opponents of cannabis legalization have argued that the 1st Amendment does not protect commercial speech by cannabis businesses due to federal illegality. These opponents ignore that Article 13 the Vermont State Constitution provides independent protection for free speech without regard to federal law, and that the Vermont Supreme Court has consistently ruled for decades that Article 13's protections are at least as extensive as those provided by the First Amendment. See, e.g., *State v. Read* 165 Vt. 141, 680 A.2d 944 (1996).

We were disappointed to see the CCB's recent written testimony opposing the proposed end to pre-approval requirements for advertising. The rationale offered by the CCB raises concerns that appear overstated given the experience of other regulated states, *none* of which require prior approval of commercial speech by cannabis businesses. Vermont's current approach places an unusual compliance burden on licensees and creates delays and uncertainty for routine business communications.

For years, Chair Pepper has claimed publicly and privately that the CCB is "neutral" on pre-approval, and merely enforcing the laws as written by the Legislature. Now that the Legislature is considering changes to this law, the CCB has abandoned its earlier neutral position and is now opposing the proposal. This is a surprise last-minute departure from the agency's previously stated view that it was neutral on the underlying policy and simply implementing the statute as written.

The CCB's advertising review/approval processes is far from "streamlined", and is a continuing source of constant frustration to licensees due to the seemingly arbitrary way in which the law is applied by CCB staff. The public record is riddled with inconsistent responses by CCB staff to questions from licensees, and a refusal to engage with followup questions when licensees believe the law is being misapplied. We implore you to eliminate the pre-approval requirement.

### **The 15% Audience Rule, As Applied, Is Also Unconstitutional**

The CCB has interpreted the 15% audience rule to prohibit cannabis businesses from making any promotional messages in practically any public place anywhere in the state. This is unconstitutional, clearly violating the unanimous 2001 United States Supreme Court ruling in *Lorillard Tobacco v. Reilly*, in which the Supreme Court concluded that a Massachusetts law banning tobacco advertising within 1,000 feet of a school was unconstitutionally broad because it prohibited outdoor advertising in areas of the state where 90%+ of the population resided. The CCB enforces Vermont's law even more broadly than that, prohibiting public advertising in areas where 100% of the state's population resides, and applying that prohibition even to our own stores' windows.

The CCB even applies this incredibly strict prohibition to our promotion and sale of *non-cannabis* merchandise, including non-intoxicating CBD products that can be openly marketed and sold by grocery store and convenience store operators throughout the state. This constitutes "speaker-based discrimination", clearly violating the United State's Supreme Court 2011 ruling in *Sorrell v. IMS Health*, which struck down a previous attempt by Vermont to restrict certain advertising practices when undertaken by certain types of advertisers, while permitting that same activity when undertaken by others.

The CCB opposes the proposed audience composition change in S.278 by focusing on unrealistic hypotheticals, but cannot defend the fundamental constitutional unsoundness of the policy. We implore you to adopt the change from 15% to 30%.

**Cannabis Needs to Be Legal to Consume, Not Just Possess**

Current law makes it illegal to consume cannabis in just about any place in Vermont other than one's owned private residence – including in rental housing without the landlord's affirmative written permission. It is illegal for visitors to our state to consume cannabis practically anywhere.

We believe our cannabis consumption laws should mirror our laws regarding consumption of tobacco and alcohol. We believe it should be legal to consume cannabis via smoking or vaping in any place where it is legal to have a lighted tobacco product, and that it should be legal to consume cannabis via oral ingestion (such as edibles or infused beverages) anywhere it is legal to consume alcohol.

To address specific concerns we have heard, we have previously shared with the committee the results of a conclusive human study by Johns Hopkins University demonstrating that the “contact high” phenomenon is a myth under real-world scenarios. We ask you to incorporate the language of S.321 into S.278.

Respectfully submitted,

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