

*Rebuttal to the Report of the Special
Senate Committee on Marijuana*



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Introduction

On March 8, 2016, the Commonwealth of Massachusetts published the Report of the Special Senate Committee on Marijuana (“Report”). The Massachusetts Senate created the Special Senate Committee on Marijuana with the purpose of researching policy ramifications and offering recommendations in the event that Massachusetts voted to regulate the recreational use and sale of marijuana. The Report covers a wide range of important issues, but however well-intentioned, it is flawed because it contains fundamental inaccuracies and speculative conclusions concerning the implications of regulating recreational marijuana. This rebuttal addresses several of the most important issues pertaining to revenue, teen usage, public health and dependency, racial disparity and driving under the influence (“DUI”). The arguments included in this rebuttal are based on a number of studies and facts cited in this document. With regard to the “serious concerns” identified in the Report that this rebuttal does not address, it is important to remember that the Question 4 ballot initiative specifically contemplated such concerns and provided the Cannabis Control Commission with authority to consider the recommendations of the expert members of the Cannabis Advisory Board and enact detailed regulations to fully address any and all concerns.¹

As voters in states like Massachusetts prepare to vote on the Question 4 ballot initiative to tax and regulate marijuana for adult use in November, it is crucial that voters are accurately informed of the facts and policy ramifications of marijuana regulation.

The Yes on 4 Campaign would like to thank the staff of Vicente Sederberg LLC for compiling the research used in this report. Vicente Sederberg, LLC is a national law firm, with offices in Denver, Boston, Las Vegas, and DC, that specializes in all aspects of marijuana law, from representing companies in the industry to advocating for changes to laws and regulations. Vicente Sederberg attorneys helped guide the drafting of Amendment 64 in Colorado and have played a key role in steering implementation of the law since the historic 2012 victory. Based on its broad experience in the cannabis industry, the firm has advised government officials, policymakers, and advocates from across the country and around the world on the development of responsible laws and regulations. For more information about Vicente Sederberg, please visit www.TheMarijuanaLawFirm.com.

¹ *An Initiative Petition for a Law Relative to the Regulation and Taxation of Marijuana*, § 5, MASS.GOV, <http://www.mass.gov/ago/docs/government/2015-petitions/15-27.pdf> (last visited August 6, 2016).

Revenue

One of the main arguments in favor of regulating recreational marijuana is the potential for the state to receive large amounts of revenue from taxes and fees. For decades, massive sums of money have been spent on recreational marijuana in the black market, but Massachusetts has not received one dime from these transactions.

The Report expresses skepticism about the amount of tax revenue that might be generated by a system of regulated marijuana sales in Massachusetts, stating that revenues may not even cover the cost of regulation and “should not be expected to provide a significant new funding source for other public needs.”² This negative expectation comes despite the Report’s acknowledgment that a regulated system would likely create hundreds of new businesses and tens of thousands of jobs in the state of Massachusetts.³

The Report’s concern that revenues generated from recreational marijuana sales may not cover the cost of regulation is unfounded, notwithstanding the fact that the Massachusetts initiative proposes lower excise tax rates than Colorado and Washington. Colorado’s direct cost of marijuana regulation constitutes a very small portion of the annual revenue from marijuana sales. In fiscal year 2014-2015, Colorado generated \$103.2 million in total marijuana revenue; however, the Colorado Marijuana Enforcement Division’s total expenditures amounted to only \$8.6 million.⁴ The tax revenue and fees generated by regulated marijuana sales in Colorado have not only exceeded the state’s expenditures by a wide margin but have been used to fund a variety of traditionally underfunded public services and programs, such as public school construction and repair, health care, education, substance abuse prevention and treatment programs and law enforcement training.⁵ In fact, in May 2016, Colorado Governor John Hickenlooper stated that he no longer opposes the regulation of recreational marijuana for adult use, in large part because it has resulted in “hundreds of millions of dollars” in new tax revenue that can be used for public safety, mental health, and addiction-prevention programs.⁶

² *Report of the Special Senate Committee on Marijuana*, MASS. SPECIAL SENATE COMM. ON MARIJUANA 5 (March 8, 2016), available at <https://malegislature.gov/Document/Download?entityTypeName=PublicReport&generalCourtNumber=0&branchName=Public&entityNumber=49>.

³ *Id.* at 26.

⁴ *Report to the Joint Budget Committee and House and Senate Finance Committees of the Colorado General Assembly*, COLORADO DEPARTMENT OF REVENUE – MARIJUANA ENFORCEMENT DIVISION (April 1, 2016), <https://www.colorado.gov/pacific/sites/default/files/DOR%20MED%20April%201%202016%20Report%20to%20the%20JBC.pdf>.

⁵ Larson Silbuagh, *Issue Brief – Distribution of Marijuana Tax Revenue*, COLORADO LEGISLATIVE COUNCIL STAFF (July 2015), <https://www.colorado.gov/pacific/sites/default/files/15-10%20Distribution%20of%20Marijuana%20Tax%20Revenue%20Issue%20Brief.pdf>.

⁶ Chris Matthews, *Colorado’s Governor is Finally Getting Chill About Legal Weed*, FORTUNE.COM (May 2, 2016), <http://fortune.com/2016/05/02/colorado-governor-hickenlooper-legal-weed/>.

According to the *Boston Globe*, **revenues from recreational sales are expected to top \$300 million in 2018 and more than \$900 million in 2020.**⁷ In Massachusetts, the revenue from medical marijuana—exempt from state sales tax—is already expected to cover the cost of its regulation. The Massachusetts Department of Public Health is projecting revenues of \$3,301,004 from medical marijuana fees in 2016.⁸ However, regulation and enforcement expenses are estimated to cost only \$2,980,394, resulting in a projected surplus of \$320,610.⁹ In comparison, the Massachusetts Alcoholic Beverages Control Commission (“ABCC”) processes approximately 23,000 retail and state level alcohol licenses each year,¹⁰ and in 2015, the ABCC’s annual budget was \$2.28 million.¹¹ While a lower tax rate in Massachusetts might result in lower revenue than in Colorado, it is designed to eliminate the black market by keeping the price of recreational marijuana at a reasonable level. Even with the lower tax rate, the projected taxes and revenues generated almost certainly will be sufficient to cover the full costs of regulating the recreational marijuana market with significant surplus left over to fund important public services and programs like public education, law enforcement training and treatment for opioid addiction. In addition, it is important to remember that every dollar generated in legal sales is a dollar that would otherwise be going into the pockets of drug dealers in the black market.

Teen Usage

Both proponents and opponents of recreational marijuana agree that teen marijuana use should be strongly discouraged.

The Report state that, “even with strong safeguards in place, legalization may increase the accessibility of marijuana for youth and contribute to the growing perception among youth that marijuana is safe for them to consume.”¹² The Report further declares, “In recent years, teen perception of marijuana’s riskiness has substantially decreased, a particularly worrisome trend. In 1991, when marijuana use among youth was at historic lows, 79% of teens thought great risk of harm could follow from smoking marijuana regularly. Today, only 36% of youth think the same. Meanwhile, the proportion of high school seniors who use marijuana daily has tripled from 2% in 1991 to 6% today.”¹³

⁷ Dan Adams, *Legal Marijuana Could Be a \$1.1 Billion Industry in Mass. by 2020*, BOSTON GLOBE (March 27, 2016), <https://www.bostonglobe.com/business/2016/03/27/legal-marijuana-could-billion-industry-mass-researchers-forecast/kNXpuKl0k4LKrLUTlaqfXL/story.html>.

⁸ *Medical Marijuana Trust Fund Annual Report*, MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH (April 2016), <http://www.mass.gov/eohhs/docs/dph/quality/medical-marijuana/mmj-trust-fund-annual-report-2016.pdf>.

⁹ *Id.*

¹⁰ *Licensing Division: Overview*, COMMONWEALTH OF MASSACHUSETTS – ALCOHOLIC BEVERAGES CONTROL COMMISSION, <http://www.mass.gov/abcc/licensing.htm> (last visited August 3, 2016).

¹¹ *Fiscal Year 2015 Annual Report*, COMMONWEALTH OF MASSACHUSETTS – ALCOHOLIC BEVERAGES CONTROL COMMISSION, <http://www.mass.gov/abcc/pdf/annualreports/2015AnnualReport.pdf> (last visited August 3, 2016).

¹² SPECIAL SENATE COMM., Report at 4.

¹³ *Id.* at 18.

Opponents of marijuana reform in 2008 and 2012 also argued that the accessibility of marijuana by teens may increase if Massachusetts voted to decriminalize marijuana in 2008 and legalize medical marijuana in 2012. However, these predictions proved to be wrong, and the Report completely ignores the Massachusetts Department of Public Health's ("DPH") statistics on teen use rates. According to data published by the DPH in May 2014, marijuana use by high school students in Massachusetts did not increase significantly between 2007 and 2009, and actually decreased from 28% in 2011 to 25% in 2013.¹⁴

Data from the 2015 Healthy Kids Colorado Survey ("HKCS") also contradicts the Report's findings on teen use and perception. The HKCS collects anonymous, self-reported health information from Colorado public middle and high school students every other year.¹⁵ In 2015, the HKCS surveyed approximately 17,000 randomly selected students from more than 157 middle schools and high schools.¹⁶ The survey found that "four out of five Colorado high school students have not used marijuana in the last 30 days, a rate that remains relatively unchanged since 2013,"¹⁷ and the findings indicate that **the rate of past-month marijuana use among Colorado high school students "is slightly lower than the national average and down slightly from the 25 percent who used marijuana in 2009, before legalization."**¹⁸ Furthermore, data from the National Survey on Drug Use and Health **did not show a statistically significant change in perceived harm associated with smoking marijuana monthly among teens aged 12-17 in Colorado from 2012-2014.**¹⁹

Smart Approaches to Marijuana, a group opposing legalization of recreational marijuana, repeatedly relies on a recent federal survey showing that teen marijuana use rates in Colorado are among the highest in the country.²⁰ However, the more recent and comprehensive 2015 HKCS' finding that teen use rates in Colorado are about average contradicts the federal survey.²¹ Notably, the HKCS survey was comprised of 17,000 students, as compared to the federal survey that polled fewer than 400 Colorado teens in a given year. The

¹⁴ *Health and Risk Behaviors of Massachusetts Youth 2013*, MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH (May 2014), <http://www.doe.mass.edu/cnp/hprograms/yrbs/2013report.pdf>.

¹⁵ *Marijuana Use: Executive Summary*, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT - 2015 HEALTHY KIDS COLORADO SURVEY 8 (2015), https://www.colorado.gov/pacific/sites/default/files/PF_Youth_HKCS-Exec-Summary-2015.pdf.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Christopher Ingraham, *Now We know What Happens to Teens When You Make Pot Legal*, THE WASHINGTON POST, (June 21, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/06/21/colorado-survey-shows-what-marijuana-legalization-will-do-to-your-kids/>.

¹⁹ State Estimates of Adolescent Marijuana Use and Perceptions of Risk of Harm from Marijuana Use: 2013 and 2014" SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, http://www.samhsa.gov/data/sites/default/files/report_2121/ShortReport-2121.html (last visited August 4, 2016).

²⁰ Christopher Ingraham, *Now We know What Happens to Teens When You Make Pot Legal*, THE WASHINGTON POST (June 21, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/06/21/colorado-survey-shows-what-marijuana-legalization-will-do-to-your-kids/>.

²¹ *Marijuana Use: Executive Summary*, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT - 2015 HEALTHY KIDS COLORADO SURVEY 8 (2015) https://www.colorado.gov/pacific/sites/default/files/PF_Youth_HKCS-Exec-Summary-2015.pdf.

HKCS' much larger sample size provides a more accurate estimate of teen marijuana use rates in Colorado than the smaller numbers in the federal survey.²²

Additionally, the Report expresses concerns that “Accidental marijuana consumption by children, such as edible products that appear similar to ordinary treats, can lead to acute health impacts. In cases where children have presented at emergency rooms from marijuana ingestion, they suffered from decreased levels of consciousness as well as difficulty breathing.”²³ The Report further states that “Nationwide, emergency room visits attributable to marijuana use (for both children and adults) doubled between 2004 and 2011, from 60,000 such visits to more than 120,000.”²⁴

A recent study published in *JAMA Pediatrics*, however, found that marijuana accounts for only 2.3 of every 1,000 poison control cases for kids 10 and younger in Colorado.²⁵ The study found that marijuana-related hospital visits for children under the age of 10 rose from 7 visits in 2013 to 16 visits in 2015.²⁶ The study concluded, “**At the national level, kids are much more likely to be poisoned by any number of common household products, like diaper cream, toothpaste, or energy drinks, than they are to be poisoned by marijuana.**”²⁷ Furthermore, 2014 data from the National Poison Data Center show that poison control receives calls about the accidental ingestion of tobacco more than 10 times as often as it receives calls about accidental ingestion of marijuana for children under the age of 5.²⁸

In sum, the regulation of recreational marijuana does not appear to have any statistically significant impact on teen usage or teen perception of risk associated with marijuana use. However, strict regulations should be implemented to prevent the use of marijuana by teens and children, and the Massachusetts ballot initiative specifically contemplates such measures. Under the initiative, the Cannabis Control Commission must adopt “requirements for the packaging of marijuana and marijuana products, which shall include special packaging requirements to protect children from ingesting marijuana or marijuana products.”²⁹ The initiative further mandates that the regulations promulgated by the Commission have “restrictions on signs, marketing, displays and advertising with respect to marijuana, marijuana products and marijuana accessories, including prohibiting marketing or advertising designed to appeal to children.”³⁰

²² Christopher Ingraham, *Now We know What Happens to Teens When You Make Pot Legal*, THE WASHINGTON POST (June 21, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/06/21/colorado-survey-shows-what-marijuana-legalization-will-do-to-your-kids/>.

²³ SPECIAL SENATE COMM., Report at 21.

²⁴ *Id.*

²⁵ Christopher Ingraham, *Your Kid is Way More Likely to be Poisoned by Crayons Than by Marijuana*, THE WASHINGTON POST (July 28, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/07/28/your-kid-is-way-more-likely-to-be-poisoned-by-crayons-than-by-marijuana/?tid=hybrid_collaborative_1_na.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *An Initiative Petition for a Law Relative to the Regulation and Taxation of Marijuana*, § 5, MASS.GOV, <http://www.mass.gov/ago/docs/government/2015-petitions/15-27.pdf> (last visited August 6, 2016).

³⁰ *Id.*

Public Health & Dependency

Substance abuse and dependency is a major public health problem facing our nation, especially in Massachusetts, and many states do not have the resources to adequately address it. However, marijuana dependency may not be as prevalent or debilitating as the Report suggests. Nevertheless, excess revenue collected from the sale of recreational marijuana can provide a substantial source of funding necessary to allocate resources that can be used to address a range of substance abuse problems.

The Report dictates that “Approximately 1 in 9 users become dependent on marijuana and require treatment to overcome this addiction. Addicts may suffer from anxiety, depression, mania, and phobias as well as other behavioral health complications.”³¹ However, data from the National Institute on Drug Abuse states, “Estimates of the number of people addicted to marijuana are controversial, in part because epidemiological studies of substance use often use dependence as a proxy for addiction even though it is possible to be dependent without being addicted.”³² Those studies suggest that 9 percent of people who use marijuana will become dependent on it.³³ In other words, according to the National Institute on Drug Abuse, **less than 1 in 10 users will become dependent on marijuana, and dependency does not necessarily indicate an actual addiction to the substance.** Additionally, addiction specialists have found that marijuana’s addictive qualities (dependence, withdrawal, tolerance) are less severe than other popular drugs, including caffeine.³⁴

Data from the United States Department of Health and Human Services (“HHS”) provides some important context behind the Report’s assertion that “Marijuana users, over time, may use more health system resources than non-users.”³⁵ The Report states, “Around 5,000 individuals receive treatment each year for drug addiction where marijuana is the primary drug being abused.”³⁶ However, the HHS findings state that in 2013, more than half of marijuana users in treatment were sent there by the courts or the criminal justice system.³⁷ These numbers account for more than the share of court-ordered referrals for any other drug, including far more toxic ones like alcohol and heroin.³⁸

³¹ SPECIAL SENATE COMM., Report at 20.

³² *Research Report Series: Marijuana*, NATIONAL INSTITUTE ON DRUG ABUSE, NATIONAL INSTITUTES OF HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES 5 (March 2016), https://www.drugabuse.gov/sites/default/files/mjrrs_3_2016.pdf

³³ *Id.*

³⁴ *Dependence Liability: Dependency Compared to Other Drugs*, DRUGSCIENCE.ORG, http://www.drugscience.org/dl/dl_comparison.html (last visited August 4, 2016).

³⁵ SPECIAL SENATE COMM., Report at 20.

³⁶ *Id.*

³⁷ Christopher Ingraham, *Courts Are Forcing Marijuana Users to Get Drug Treatment They Probably Don’t Need*, THE WASHINGTON POST (December 14, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/12/14/courts-are-forcing-marijuana-users-to-get-drug-treatment-they-probably-dont-need/>.

³⁸ *Id.*; See also *2013 Treatment Episode Data Set (TEDS) Marijuana/Hashish – 2013: National Admissions to Substance Abuse Treatment Services*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES: SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION 21 (January 2015), available at

Furthermore, HHS data for 2013 show marijuana users comprised more than a quarter of all drug treatment admissions, further explicating that **“court-ordered marijuana treatment is taking up more than 1 out of every 10 beds in the nation's drug treatment facilities — at a time when prescription painkillers and heroin are killing record numbers of Americans.”**³⁹

Moreover, researchers examined data from Medicare Part D from 2010 to 2013 and found that states that legalized medical marijuana—which is often recommended for symptoms like chronic pain, anxiety or depression—saw declines in the number of Medicare prescriptions for drugs used to treat those conditions and a dip in spending by Medicare Part D, which covers the cost of prescription medications.⁴⁰ In states with medical marijuana laws, researchers found that **“the number of prescriptions dropped for drugs to treat anxiety, depression, nausea, pain, psychosis, seizures, sleep disorders and spasticity. Those are all conditions for which marijuana is sometimes recommended.”**⁴¹

In conclusion, scarce resources for individuals addicted to more serious drugs like cocaine and opioids are being wasted on responsible marijuana users who are merely arrested for possession. Since Colorado has started regulating recreational marijuana, it has been able to allocate significant resources to fund and implement substance abuse prevention, treatment and education programs. Tax revenue collected from the sale of marijuana in Colorado is deposited in two different funds: The Building Excellent Schools Today (“BEST”) Fund and the Marijuana Tax Cash Fund (“MCTF”).⁴² In fiscal year 2014-2015, through the MCTF, Colorado was able to allocate \$2 million for the expansion of youth services program grants for prevention, \$1.5 million for substance use disorder treatment services for adolescents in pregnant women, \$1 million for the substance use screening, brief intervention, and referral treatment program, \$260,000 to fulfill the reserve requirement for school-based prevention and intervention programs, \$2 million for the school-based early intervention and prevention substance abuse grant program, and \$4,363,807 for fund school-based prevention and intervention services.⁴³

http://www.samhsa.gov/data/sites/default/files/2003_2013_TEDS_National/2003_2013_Treatment_Episode_Data_Set_National.pdf.

³⁹ Christopher Ingraham, *Courts Are Forcing Marijuana Users to Get Drug Treatment They Probably Don't Need*, THE WASHINGTON POST (December 14, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/12/14/courts-are-forcing-marijuana-users-to-get-drug-treatment-they-probably-dont-need/>.

⁴⁰ Shefali Luthra, *After Medical Marijuana Legalized, Medicare Prescriptions Drop for Many Drugs*, NATIONAL PUBLIC RADIO (July 6, 2016), <http://www.npr.org/sections/health-shots/2016/07/06/484977159/after-medical-marijuana-legalized-medicare-prescriptions-drop-for-many-drugs>.

⁴¹ *Id.*

⁴² Larson Silbuagh, *Issue Brief – Distribution of Marijuana Tax Revenue*, COLORADO LEGISLATIVE COUNCIL STAFF (July 2015), <https://www.colorado.gov/pacific/sites/default/files/15-10%20Distribution%20of%20Marijuana%20Tax%20Revenue%20Issue%20Brief.pdf>.

⁴³ *Id.*

Racial Disparity

The current marijuana laws have produced profoundly unequal outcomes across racial groups, with racially biased enforcement disproportionately affecting communities of color. In Massachusetts, **an African American person is 3.9 times more likely than a white person to be arrested for marijuana possession, even though African Americans and whites use marijuana at similar rates.**⁴⁴ This racial disparity remains even as overall arrest rates have declined significantly since Massachusetts decriminalized marijuana in 2008.⁴⁵ Even without a criminal conviction, marijuana charges can negatively impact an individual with regard to public housing, financial aid, employment, child custody, immigration status,⁴⁶ professional licensure, food assistance, driver's license, firearms permit and the right to vote. Regulating the possession and sale of recreational marijuana in Massachusetts would reduce the negative collateral consequences of such disenfranchisement on minorities.

The Report argues that “since 2008 when Massachusetts decriminalized possession of up to one ounce of marijuana, arrest rates for possession have declined significantly.”⁴⁷ A graphic accompanying this paragraph shows the change in both “defendants” and “incarcerations” between FY2007 and FY2013, based on data from the Massachusetts Sentencing Commission Survey of Sentencing Practices (SSP). The chart suggests there were just 20 “defendants” and 4 “incarcerations” in 2013 for marijuana possession.⁴⁸ In this, the Report badly mischaracterizes the data.

First, the “defendants” numbers the Report cites are in fact classified as “convictions” by the Survey of Sentencing Practices⁴⁹; the number of defendants is inarguably higher, and the number of arrests higher still. An arrest – even without charges or a conviction – has lasting consequences for the individual arrested. Second, the Report looks only at those classified by the SSP as convicted of a “Possession Class D Marijuana” offense. It ignores the 115 other Class D Possession convictions and 16 other incarcerations listed in the 2013 SSP, almost all of which are for marijuana possession.

Third, the Report ignores data from the FBI's Universal Crime Reporting database that shows a total of 746 arrests for marijuana possession in Massachusetts in 2013 – a dramatically different picture from the 20 such arrests that the Report purports to show. Finally, in a section of the report focused on arrest rates and the impact of marijuana and marijuana laws on minority communities, it is surprising that the Report fails to mention that blacks are more than three times more likely to be arrested for marijuana possession in

⁴⁴ *The War on Marijuana in Black and White*, AMERICAN CIVIL LIBERTIES UNION 4 (June 2013), <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ SPECIAL SENATE COMM., Report at 24.

⁴⁸ *Id.*

⁴⁹ *Survey of Sentencing Practices FY2013*, MA Executive Office of the Trial Court, Department of Research and Planning (December 2014), <http://www.mass.gov/courts/docs/admin/sentcomm/fy2013-survey-sentencing-practices.pdf>.

Massachusetts than are white residents – a number that has worsened since decriminalization. Instead, the Report merely suggests that “advocates for legalization believe that racial disparities continue to be a problem in the enforcement of marijuana laws” – despite the presence of data bearing out that finding.

While regulation would reduce the number of individuals negatively affected by the enforcement of the marijuana laws currently in place, the Report expresses concern that the mere presence of licensed marijuana establishments may be harmful to minority communities. The Report states, “the negative impacts of substance use often fall disproportionately on minority communities, and...legalization could increase access to marijuana in minority communities, leading to increased harm.”⁵⁰ Such sentiments are both paternalistic and not based in fact. A 2014 study conducted by the University of Colorado - Denver found medical marijuana dispensaries in Denver do not impact surrounding neighborhoods any more than a coffee shop or a pharmacy, and residents do not perceive them as undesirable uses of storefronts.⁵¹ Another 2014 study found that **marijuana dispensaries do not appear to negatively impact the urban landscape or health of the communities in which they are located.**⁵²

Additionally, a provision in the ballot initiative to regulate and tax marijuana in Massachusetts would require that regulations include “procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities.”⁵³ This requirement provides a mechanism for implementing the Report’s stated policy goal of preventing “the pursuit of profits from disproportionately harming low-income and minority communities,”⁵⁴ in a manner that is truly mindful and considerate of the racial disparities perpetuated by the current system of marijuana prohibition.

OUI - Marijuana

Operating under the influence of any substance creates serious public safety risks, and a goal of a system of robust marijuana regulations should be to minimize impaired driving. It is currently illegal in Massachusetts to operate a motor vehicle while impaired by marijuana,⁵⁵ and it will remain illegal under the ballot initiative. Detecting marijuana impairment is challenging because the presence of tetrahydrocannabinol (“THC”), the

⁵⁰ SPECIAL SENATE COMM., Report at 25.

⁵¹ William Breathes, *Medical Marijuana Stores Impact Neighborhoods in Denver No More Than Coffee Shops*, Study Says, WESTWORD.COM (February 19, 2014), <http://www.westword.com/news/medical-marijuana-stores-impact-neighborhoods-in-denver-no-more-than-coffee-shops-study-says-5899580>.

⁵² Boggess et. al., *Do Medical Marijuana Centers Behave Like Locally Undesirable Land Uses? Implications for the Geography of Health and Environmental Justice*, URBAN GEOGRAPHY (February 5, 2014), <http://www.tandfonline.com/doi/abs/10.1080/02723638.2014.881018>.

⁵³ *An Initiative Petition for a Law Relative to the Regulation and Taxation of Marijuana*, § 5, MASS.GOV, <http://www.mass.gov/ago/docs/government/2015-petitions/15-27.pdf> (last visited August 6, 2016).

⁵⁴ SPECIAL SENATE COMM., Report at 29.

⁵⁵ MGL c. 90 § 24(1)(a)(1).

psychoactive component in marijuana, in a person's body does not necessarily indicate impairment.⁵⁶ Colorado has addressed this issue by increasing training for law enforcement officers to detect driver impairment while technology like a breathalyzer test used for alcohol continues to be developed.⁵⁷

The Report expresses concerns about law enforcement officers' ability to detect driver impairment stating, "There is no well-accepted standard for determining driver impairment from marijuana intoxication and no equivalent test to an alcohol breathalyzer, making it difficult for law enforcement to identify and arrest offenders and gain convictions in court."⁵⁸ However, many Colorado law enforcement officers are specially trained in the detection of driver impairment, and this training can be used to obtain OUI convictions: "**In 2012 there were 129 peace officers statewide trained as Drug Recognition Experts and by November 2015 there were 228. Hundreds of additional peace officers have also received training in Advanced Roadside Impaired Driving Enforcement.**"⁵⁹ Colorado's Advanced Roadside Impaired Driving Enforcement training instructs officers on how to identify and assess drivers suspected of being under the influence of drugs or alcohol.⁶⁰ State law enforcement agencies also have trained Drug Recognition Experts on staff that can detect impairment from a variety of substances.⁶¹

It is important to note that, while there have been increases in the number of officers trained to detect OUI-marijuana, an increase in targeted enforcement efforts, and an increase in the total number of drivers on Colorado roads as the state's population has continued to grow, the state has not seen a corresponding rise in marijuana-related OUI citations.⁶² Citations for marijuana-related OUI decreased slightly from 2014 to 2015, a fact that Andrew Freedman, the Director of the Colorado Governor's Office of Marijuana Coordination, mentioned in his testimony before Vermont's House Judiciary Committee in early 2016 when Vermont was considering its own marijuana regulations.⁶³

Both supporters and opponents agree that any system of regulated marijuana should be committed to minimizing the public safety risks of impaired driving. A public education campaign to inform drivers about the risks and consequences of driving impaired is advisable, while also increasing training of law enforcement to recognize impaired drivers. With regulation of marijuana, law enforcement will no longer spend time

⁵⁶ *Tests for Driver Impairment by Marijuana Flowed: AAA*, CBSNEWS.COM (May 10, 2016), <http://www.cbsnews.com/news/tests-for-driver-impairment-by-marijuana-flawed-aaa/>.

⁵⁷ Rob Low, *Colorado State Patrol Troopers Testing Marijuana DUI devices*, KDVR.COM (January 26, 2016), <http://kdvr.com/2016/01/26/colorado-state-troopers-testing-marijuana-dui-devices/>.

⁵⁸ SPECIAL SENATE COMM., Report at 5.

⁵⁹ *Marijuana Legalization in Colorado: Early Findings*, COLORADO DEPARTMENT OF TRANSPORTATION (March 2016), <http://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf>.

⁶⁰ ARIDE, COLORADO DEPARTMENT OF TRANSPORTATION, <https://www.codot.gov/safety/alcohol-and-impaired-driving/law-enforcement/aride> (last visited August 4, 2016).

⁶¹ *Drug Recognition Experts (DRE) Program*, COLORADO DEPARTMENT OF TRANSPORTATION, <https://www.codot.gov/safety/dre> (last visited August 4, 2016).

⁶² Abby Isaacs, DIRECTOR FROM COLORADO GOVERNOR'S OFFICE TESTIFIED FOR MARIJUANA BILL, WPTZ.COM (2016), <http://www.wptz.com/news/director-from-colorado-governors-office-testified-for-marijuana-bill/38774658> (last visited August 4, 2016).

⁶³ *Id.*

arresting and prosecuting adults for possessing marijuana, and therefore will have more time to spend enforcing laws against driving under the influence of alcohol, marijuana, or other substances.

Conclusion

As Massachusetts voters consider how to vote on Question 4 in November, it is vital that they be fully and accurately informed of the facts and policy ramifications of regulating marijuana for adult recreational use. This rebuttal serves to counter and correct the speculative and inaccurate information that forms the basis of the Report's concerns about revenue, teen usage, public health and dependency, racial disparity and driving under the influence. The time has come to end marijuana prohibition and eliminate the black market in favor of a sensible system of taxation and regulation, and voters at the polls in November should base their decisions on facts and sound policy arguments rather than the misconstrued statistics and unfounded speculation of misinformed public officials. For additional information on any of the issues highlighted in this rebuttal or the Report, please visit the Yes on 4 (formerly known as the Massachusetts Campaign to Tax and Regulate Marijuana like Alcohol) website at <https://www.regulatemassachusetts.org/>, or contact us via telephone at (857) 239-8743 or via email at info@regulatemass.com.