

FEBRUARY 5, 2019, PREPARED REMARKS OF JACOB B. PERKINSON, CO-CHAIR OF THE GOVERNOR'S ADVISORY COMMISSION ON MARIJUANA, TO THE SENATE COMMITTEE ON FINANCE REGARDING THE TAX RATE RECOMMENDED BY THE COMMISSION

Good Afternoon, Madame Chairwoman and Members of the Committee. Thank you for inviting me to testify today. My name is Jake Perkinson and I serve as Co-Chair, along with Tom Little, of the Governor's Advisory Commission on Marijuana.

The Commission was tasked with evaluating the prospect of a taxed and regulated market for cannabis in Vermont and providing recommendations on how Vermont could implement a cogent, comprehensive and responsible scheme of regulation that addressed existing and anticipated health and safety issues associated with cannabis and did not increase the financial burdens on the State's budget. The Commission worked for a year and a half exploring many alternatives and possibilities and issued its Report on December 18, 2018.¹

A keystone element of the Commission's final recommendations is the application of a tax rate that could, in the medium and long term, provide income sufficient to fund the costs the Commission identified as being associated with a cannabis market in Vermont. At the same time, the Commission endeavored to avoid recommending the imposition of a tax rate that would unduly burden market participants and incentivize illicit activity. Because participating in the cannabis market as a consumer or producer is a private, voluntary activity, the rationale adopted by the Commission is that taxes collected from this activity should be directed first to the programs necessary to address the effects of such activity in Vermont. Importantly, while there is debate about whether the move to a legal commercial market would increase abuse, access by youth and other problems, there is no debate that these problems already exist. Thus, one of the advantages of a regulated market is to assess taxes on those who benefit from the use and production of cannabis to address the issues that exist now and will continue to exist in a regulated market.

Ultimately, the Commission recommended that Vermont adopt a 20% *ad valorem* tax to be assessed and collected on all retail sales of cannabis. *See Tax and Regulate Subcommittee Final Report at 6 and 8-14.*² It is important to note that, based on the estimates of expected retail sales in Vermont, this rate does not fully fund the costs anticipated to be incurred in the first years of a legalized cannabis market in Vermont. *Id.* at 6; *see also id* at 20-29 (describing expected budget costs). The Commission also recommended that the state's 6% sales tax and any applicable local option taxes apply to all sales of cannabis products in Vermont, resulting in a final cumulative tax rate of 26-

¹ The Commission's Final Report is available at:

<https://marijuanacommission.vermont.gov/commissiondocuments>

² The Subcommittee Report is available at:

https://marijuanacommission.vermont.gov/sites/mc/files/doc_library/12%2018%202018%20FINAL%20Commission%20Adoption%20of%20Tax%20and%20Regulate%20Subcommittee%20Report%282%29.pdf

27% on retail sales. Notably, this proposed tax rate is lower than many states with existing regulated markets. *Id.* at 9-11.

To understand the rationale for the recommended tax rate it is necessary to have in mind the recommendations in the Commission’s Report and those of its Subcommittees as a whole. As noted, the touchstone for determining an appropriate tax rate was determining the true costs imposed on the state of Vermont by existing and expected cannabis use. With respect to health and safety, the costs associated with addressing cannabis use in Vermont are substantial. *See* Education and Prevention Report at 4-7³ and Roadway Safety Report, generally.⁴ These recommendations include essential programs directed at preventing intoxicated drivers and providing critical education and prevention services for Vermont’s youth.

The expected costs for the recommended programs in the aggregate amount to approximately \$7.7 million prior to the first year of any retail sales, \$14.9 million in the first year of retail sales, \$15.5 million in year two and \$17.2 million in year three. *See* Tax and Regulate Report at page 28. As noted above, these costs exceed the revenues expected from a 20% tax imposed on retail sales in the first year of sales under any “low”, “medium”, or “high” revenue estimates. *Id.* at 17. In years two and three the “low” and “medium” estimates would also fall short of funding needs while the “high” estimate would provide sufficient funds, exclusive of funding necessary for the operation of the regulatory authority itself. *Id.*

On this last point of funding the regulatory structure, it is notable that the Commission did not receive cost estimates from the Department of Liquor and Lottery for the required funding to house the regulatory functions of a Cannabis Control Board within that department as recommended by the Commission. *See* Tax and Regulate Report at 7 and 33-35. However, this shortcoming in the Commission’s work provides a convenient analytical juxtaposition between the Commission’s funding recommendations for identified costs and the universe of costs addressed by Senate Bill 54.

S.54 contemplates that regulation of an adult-use cannabis market will be accomplished by a Cannabis Control Board and funding for these efforts provided through the assessment of fees. S.54, §841 and §843. This is the model currently in use with respect to Vermont’s medical cannabis program. While it is possible that a fee structure could be implemented to fund the activities of the Cannabis Control Board as contemplated in S.54, there is no prospect that any of the programs recommended by the Commission could be funded in this manner.

³ Available at:
https://marijuanacommission.vermont.gov/sites/mc/files/doc_library/12%2018%2018%20FINAL%20Commission%20Adoption%20of%20Prevention%20Report.pdf

⁴ Available at:
https://marijuanacommission.vermont.gov/sites/mc/files/doc_library/12%2018%2018%20Commission%20FINAL%20Adoption%20of%20Roadway%20Safety%20Subcommittee%20Report.pdf

This presents in stark relief the different approaches of S.54 and the recommendations of the Commission and represents a significant policy choice for the Legislature. The Commission endeavored to assess and quantify the identifiable costs and necessary remedies associated with cannabis consumption in Vermont and recommended a tax scheme that would provide a viable means for addressing these needs through the direct dedication of funds collected from a tax on retail sales. S.54 provides potential funding solely for the new administrative requirements of a regulated cannabis market in Vermont supported by fees assessed against market participants while funneling taxes collected on retail sales into the General Fund.

As federal dollars for safety, education and healthcare become more erratic it becomes all the more critical for Vermont to establish a system that funds the programs needed to address the effects of the activities it decides to allow. In the absence of such an approach, those who wish to indulge in cannabis commerce and use impose a private tax on all Vermonters as the funding needed to address the effects of adult use and the market that supports it are necessarily drawn from the pockets of all, instead of being funded specifically by those who enjoy the use of, and profits from, this substance.

ADEQUATE ENFORCEMENT IS NECESSARY FOR A VIABLE MARKET

While the Commission made its best efforts to analyze and anticipate all costs associated with the development of the regulated adult-use cannabis market in Vermont, it obviously cannot predict future needs in every instance. However, I would like to take this opportunity to emphasize explicitly a point that is implicit in the recommendations of the Commission. That is the need for a robust enforcement effort to protect the interests of consumers as well as businesses operating in the regulated market. I raise this issue here because it could very well impact the analysis of what resources can or should be considered necessary in anticipating the creation of a regulated cannabis market for adult use in Vermont and thus inform funding mechanisms and assessment rates.

There are two ways to obtain compliance with the law: sticks and carrots. The carrot proposed here, of course, is to allow commercial transactions in cannabis to provide employment and profit as well as access to Vermonters. Of course, carrots alone do not guarantee compliance, especially where evasion of the law can result in greater rewards than compliance.

With respect to cannabis markets in the U.S., illicit markets for goods produced in legalized states will exist in the United States so long as prohibition applies in any jurisdiction. We saw proof positive of this recently in Burlington where a retailer was openly flaunting the prohibition against sales in Vermont and offering finished products produced in states with a legalized commercial market.

Thus, in considering the appropriate amount of resources that should be dedicated to dealing with not only the regulation of cannabis, but the effects of cannabis use and commerce, a major element that was assumed, but not explicitly addressed by the Commission's report is the need for enforcement. While the Commission's report recommended strategies for dealing with drugged drivers on the roads and keeping

children away from cannabis products, it assumed, rather than explained that any statute adopted would necessarily need to have the means to enforce that statute.

Over 100 years ago, in February of 1891, the future Supreme Court Justice Louis Brandeis testified before the Massachusetts Legislature in favor of reforming the laws applicable to liquor in that state. And while I believe he had much to say on the issue that would be informative in its application to the one this Committee is faced with today, the statement that struck me as the most salient part of his testimony for our purposes today was that: “no law can be a good law – every law must be a bad law – that remains unenforced.”

In the end, any scheme that increases the cost of doing business without also increasing the risk of punishment for noncompliance will not be adopted by operators. Only by making the risk of noncompliance a concrete, credible, and costly inevitability will operators be incentivized to move into a regulated market.

Robust enforcement is necessary not only to ensure that the health and safety of Vermonters is protected and that all participants in any market are treated fairly, but because the revenue assumptions upon which the Commission’s recommendations are based assume a full level of participation in the regulated market by all producers, sellers and buyers. In the absence of enforcement, bad actors will continue to fuel the illicit market, reduce the revenues available to support a legalized regime and ultimately undermine every motivation for moving to a commercial model of cannabis consumption.

Thank you.