December 18, 2017
130 E Aurora Ave
Des Moines, Iowa 50313-3654

Joni Ernst
111 Russell Senate Office Building
Washington, D.C. 20510

Re: Request for federal legislation clarifying existing federal law

Dear Senator Ernst,

The State of Iowa has enacted a law, 2017 Acts Chapter 162, H.F. 524, Iowa Code § 124E (2017), that authorizes the cultivation of marijuana in Iowa.

https://www.legis.iowa.gov/docs/publications/iactc/87.1/CH0162.pdf

Current federal penalties for cultivation of marijuana include up to life in federal prison and fines of up to $50 million, 21 U.S.C. § 841(b)(1)(A)(vii) (2017).

https://www.gpo.gov/fdsys/pkg/USCODE-2011-title21/pdf/USCODE-2011-title21-chap13-subchapI-partD-sec841.pdf

Clearly, it would be totally absurd to suggest that Iowa is authorizing a violation of federal law. And, yet, we hear a lot of confusing statements.

Iowa House Speaker Linda Upmeyer has repeatedly suggested that Iowa is authorizing violations of federal law.

On March 27, Speaker Upmeyer was quoted by KGLO News in Mason City saying, “they are already anticipating doing this bill with the possibility of breaking two federal laws.”

http://kglonews.com/upmeyer-says-legislators-working-on-medical-marijuana-issue/

On September 11, Speaker Upmeyer was quoted by the Des Moines Register, "House Speaker Linda Upmeyer, R-Clear Lake, noted in a statement that no matter what the Legislature had decided, the state still would have been in violation of federal law."

This problem is not confined to one Iowa legislator. State regulatory agencies have struggled with this issue.

For example, state regulators in Maine wrote, "Page 1-1, Purpose: The activities described in these rules are considered a violation of federal law."

http://www.maine.gov/dhhs/mecdc/public-health-systems/mmm/documents/MMMP-Rules-144c122.pdf

State regulators in New Jersey wrote, "Page 40: The new rules conflict with Federal law."

http://www.state.nj.us/health/medicalmarijuana/documents/final_rules.pdf

The Federal Aviation Administration regulation, 14 C.F.R. § 91.19 (2017), clearly shows that state authorized use of controlled substances is not illegal activity under federal law and has never been understood to be illegal activity.

> Title 14: Aeronautics and Space
> PART 91—GENERAL OPERATING AND FLIGHT RULES
> Subpart A—General
> §91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
>
> (a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.
>
> (b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or

> substances authorized by or under any Federal or State statute or by any Federal or State agency.

https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=03efb7c1b34301bf39ff6d98084cdd45&rgn=div8&view=text&node=14:2.0.1.3.10.1.4.10&idno=14

Because this is a matter of confusion affecting the health, welfare, and safety of Iowans, Congress needs to act. Please introduce the attached legislation at your earliest convenience.

If you have any questions, feel free to contact me.

Thank you!

Sincerely,

Carl Olsen
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115th CONGRESS
2nd Session

S. ____

To acknowledge the principle of federalism as it applies to State drug policy.

IN THE SENATE OF THE UNITED STATES

A BILL

To acknowledge the principle of federalism as it applies to State marihuana policy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Respect State Marihuana Policy Act of 2018".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS. — The Congress finds that —

(1) the framers of the Constitution, recognizing state sovereignty, secured its protection in the Tenth Amendment to the Constitution;

(2) since 1996 a total of forty-six states have enacted laws defining marihuana or extracts of marihuana as medicine;

(3) in Gonzales v. Raich, 545 U.S. 1, 28 n.37 (2005) the Supreme Court expressed serious doubt for the accuracy of the findings that require marijuana to be listed in Schedule I, e.g., Institute of Medicine, Marijuana and Medicine: Assessing the Science Base 179 (J. Joy, S. Watson, & J. Benson eds. 1999) (recognizing that "[s]cientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC [Tetrahydrocannabinol] for pain relief, control of nausea and vomiting, and appetite stimulation");

(4) the National Academies of Sciences, Engineering, and Medicine,

The health effects of cannabis and cannabinoids: The current state of evidence and recommendations for research S-16 (The National Acadamies Press 2017), found there are specific regulatory barriers, including the classification of cannabis as a Schedule I substance, that impede the advancement of cannabis and cannabinoid research (15-1);

(5) in Gonzales v. Oregon, 546 U.S. 243 (2006) the Supreme Court acknowledged the decision making authority to accept the medical use of controlled substances is reserved to the states;

(6) Congress did not define the term "currently accepted medical use" in the Controlled Substances Act, Alliance for Cannabis Therapeutics v. Drug Enforcement Administration, 930 F.2d 936, 939 (D.C. Cir. 1991); and

(7) Congress did not intend the term "accepted medical use in treatment in the United States" to require a finding of recognized medical use in every state, Grinspoon v. Drug Enforcement Administration, 828 F.3d 881, 886 (1st Cir. 1987).

(b) PURPOSES. — The purposes of this Act are —

(1) to acknowledge that the classification of marihuana as a substance without currently accepted medical use in treatment in the United States does not apply to currently accepted medical use of marijuana in treatment in the individual states; and

(2) to remove marihuana from the classification reserved exclusively for substance without currently accepted medical use in treatment in the United States.

SEC. 3. FEDERALISM IN MARIHUANA POLICY.

Section 708 of the Controlled Substances Act (21 U.S.C. 903) is amended—

(1) by striking "No provision" and inserting the following: "(a) In general.—Except as provided in subsection (b), no provision"; and

(2) by adding at the end the following: "(b) Compliance with State law.—Notwithstanding any other provision of law, the provisions of this title relating to marihuana shall not apply to any person acting in

compliance with State law, as determined by the State, relating to the production, possession, distribution, dispensation, administration, laboratory testing, recommending use, or delivery of medical marihuana.".

SEC. 4. RESCHEDULING OF MARIHUANA.

(a) Removal from Schedule I.—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended in subsection (c)—

(1) by striking paragraphs (10) and (17);

(2) by redesignating paragraphs (11) through (16) as paragraphs (10) through (15), respectively; and

(3) by redesignating paragraphs (18) through (28) as paragraphs (16) through (26), respectively.

(b) Listing in Schedule II.—Schedule II, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended by adding at the end the following: "(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of marihuana, including its salts, isomers, and salts of isomers.".