105TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPT. 105–451 Part 1

SENSE OF THE HOUSE OF REPRESENTATIVES WITH RESPECT TO MARIJUANA FOR MEDICINAL USE

MARCH 18, 1998.—Ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary, submitted the following

R E P O R T

DISSENTING VIEWS

[To accompany H. Res. 372]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 372) expressing the sense of the House of Representatives that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use, having considered the same, reports favorably thereon without amendment and recommends that the resolution be agreed to.

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PURPOSE AND SUMMARY

H. Res. 372 expresses the sense of the House of Representatives that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use.

Three states—Arizona, California, and Washington—have already voted on Medical Marijuana initiatives, and more than 30 others, along with the District of Columbia, have been targeted for possible medical marijuana initiatives. All of these initiatives, in seeking to make marijuana available as a medicine, violate the Controlled Substances Act[1] (CSA), which schedules all drugs based on their medical utility and potential for abuse. Under the CSA, marijuana for decades has been classified a Schedule I drug due to its lack of any accepted medical use and its high potential for abuse. These State initiatives also bypass the long-established scientific and medical approval process overseen by the Food and Drug Administration (FDA) for ensuring safe and effective medications.

The FDA is joined by the National Institute of Health, the American Medical Association, the National Institute of Drug Abuse, the American Cancer Society, the National Multiple Sclerosis Association, the American Academy of Ophthalmology, the National Eye Institute and many other scientific and medical organizations in concluding that marijuana is not a medicine. It is the view of the Committee that their collective expert judgment—and the long-established FDA drug approval process, pursuant to the Controlled Substance Act—cannot be ignored simply because a State initiative seeks to label marijuana "medicine." Either, on the basis of scientific evidence and testing, marijuana is a medicine, or it is not. The Committee does not believe that an opinion poll or a State initiative alters that status. H. Res. 372 reflects the view that science cannot be based on opinion polls. This was the position taken at the Crime Subcommittee hearing on October 1, 1997, by General Barry McCaffrey, the Director of the Office of National Drug Control Policy, Dr. Alan Leshner, Director of the National Institute of Drug Abuse, and numerous other witnesses, who strongly opposed the State marijuana initiatives.

It is the view of the Committee that until the agencies with the authority and expertise, through the established scientific testing and review process, find marijuana to have legitimate medical applications, it should not be legalized by States for medicinal purposes. This resolution takes that position, and provides the House of Representatives, as an institution, the opportunity to participate in the medical marijuana debate.

BACKGROUND AND NEED FOR THE LEGISLATION

State Initiatives

Two States—California and Arizona—passed initiatives in November, 1996, which legalized the possession of marijuana for medical use. In November, 1997, Washington State rejected Initiative 685 which, like that of Arizona, would have made all Schedule I

[1] The Controlled Substances Act, Pub.L. 91–513, October 27, 1970, Title 18, United States Code, Section 812.

drugs (which includes LSD and heroin) available for a wide range of ailments. Referenda or bills are pending in 12 States and being pushed in as many as 20 others around the country. Currently, in the District of Columbia, signatures are being gathered to place the "Legalization of Marijuana for Medical Treatment Initiative of 1998" on the ballot in November, 1998.

The processes by which citizens of States change or adopt new laws involve either initiatives or referenda. Initiatives may propose constitutional amendments or legislation and may be direct or indirect. The direct initiative allows a proposed measure to be placed on the ballot after a specific number of signatures have been secured on a citizen petition. The indirect initiative must be submitted to the legislature for a decision after the required number of signatures has been secured on a petition and prior to placing the proposed measure on the ballot. A referendum refers to the process whereby a State law or constitutional amendment passed by the legislature may be referred to the voters prior to taking effect. In both California and Arizona, the medical marijuana initiatives involved changes to State statutes through direct initiatives.

California's Proposition 215, "The Compassionate Use Act of 1996," stated: "Section 11357 (criminal penalties), relating to the possession of marijuana, and Section 11358 (criminal penalties), relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possess or cultivate marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." This referendum passed with 56% support. Proposition 215 made marijuana available without a written prescription, bypassing established Federal scientific and medical guidelines for dispensing drugs. Furthermore, Proposition 215 also made marijuana available in violation of the Controlled Substances Act (21 U.S.C. 812) which classifies marijuana as a Schedule I drug because it has "a high potential for abuse, . . . no currently accepted medical use in treatment," and "a lack of accepted safety [even] under medical supervision."

Arizona's Proposition 200, the "Drug Medicalization, Prevention, and Control Act of 1996," stated: "We must toughen Arizona's laws against violent criminals on drugs. Any person who commits a violent crime while under the influence of illegal drugs should serve 100% of his or her sentence with absolutely no early release." The Proposition then stated that doctors may be permitted "to prescribe Schedule I controlled substances to treat a disease, or relieve the pain and suffering of seriously ill and terminally ill patients." In legalizing all Schedule I drugs for medical use, Proposition 200 legalized such drugs as crack cocaine, LSD, and heroin, in violation of the Controlled Substances Act. The referendum passed with 65% support.

Within five months of the Arizona referendum passing, the Arizona State legislature had passed three separate bills which greatly limited the effect of the Proposition 200. These provisions include the requirement that FDA approval of any Schedule I drug be obtained before it can be prescribed.

Marijuana as "Medicine"

A review of over 6000 articles from the medical literature, published in the May 15, 1997 *Annals of Internal Medicine* evaluating the potential medicinal applications of crude marijuana concluded that marijuana is not a medicine; its use causes significant toxicity; numerous safe and effective medicines are available making the use of crude marijuana unnecessary for medicinal purposes.

There are more than 12,000 scientific marijuana studies that have been published to date, and are on file at the University of Mississippi. The findings from these studies provide no conclusive evidence that smoked marijuana is safe or effective for the treatment of any condition.

Claims that smoking marijuana is beneficial for a variety of illnesses are anecdotal and not founded in scientifically accepted research. To the contrary, according to the National Institute of Health (NIH), research indicates that smoking marijuana may lead to a variety of clinically significant impairments. A March, 1992, NIH report concluded that scientific studies have never shown crude marijuana to be safe or effective as medicine. NIH has taken the position that if any of the more than 65 cannaboids in the marijuana plant were proven in the future to be medically beneficial, delivery routes other than smoking should be developed, because of the dangers posed by smoking plant material as well and dose standardizing problems.

The federal drug approval process has been a long-established element of U.S. drug control policy. Before any drug can be approved as a medication it must meet rigorous and extensive scientific criteria, as established by the Food and Drug Administration. As such, no drug can be prescribed without first having obtained FDA approval. Currently, marijuana—in any form—has not met the necessary standards to be approved as medication. Barry McCaffrey, Director of the Office of National Drug Control Policy, has stated: "Based upon the scientific evidence to date and the advice of such organizations as the American Medical Association, the American Cancer Society, the National Multiple Sclerosis Association, the American Academy of Ophthalmology, the National Eye Institute and the National Institute of Drug Abuse, there is no rational basis to change that designation through ballot initiatives in conflict with federal law."[2]

Dangers Associated With Marijuana

The research unambiguously demonstrates that smoked marijuana impairs normal brain functions, and damages the heart, lungs, reproductive and immune systems. According to the National Institute of Allergies and Infectious Diseases, HIV-positive smokers of marijuana progress to full-blown AIDS twice as fast as non-smokers, and have an increased incidence of bacterial pneumonia.

After years of decline, marijuana use has dramatically increased in recent years. The most significant increase has been among eighth, tenth, and twelfth-graders. From 1992 to 1996, marijuana

[2] Press Release, Office of National Drug Control Policy, July 22, 1997, "President's Drug Policy Advisor Writes D.C. Leaders; reiterates Administration's Opposition to Drug-Legalizing."

use increased by 253 percent among eighth-graders, 151 percent among tenth-graders, and 84 percent among twelfth-graders. Today, the average age of first-time use of marijuana is younger than it has ever been. The number of individuals seeking treatment for marijuana addiction has now risen to more than 140,000 each year.

In recent years there have been four significant changes regarding marijuana use. First, marijuana users are younger. The annual survey conducted by the Partnership for a Drug–Free America released on March 4, 1997, found that among children 9 through 12 years of age who were interviewed, nearly one-fourth of them were offered drugs in 1996, with marijuana being the predominant drug offered. Only 19 percent of the same age group gave this response on the survey covering 1993. The University of Michigan's "Monitoring the Future Survey" reported that 8 percent of sixth-grade students interviewed said they had tried marijuana in 1996, while 23 percent of the seventh-grade students and 33 percent of the eighth graders said they had done so.

Second, the typical marijuana dose today is significantly larger than in years past, with doses now often laced with other drugs. As a result, in recent years there has been a dramatic increase in the number of marijuana-related emergency room episodes for 12- to 17-year olds.

Third, the potency of marijuana has increased substantially in recent years. According to the Drug Enforcement Administration, the THC content in marijuana (THC is the active ingredient in marijuana) has doubled in the last decade, due to cloning and genetic manipulation.

And fourth, the harmful effects of marijuana use are now clear, having been extensively studied since the 1960s. For example, the gateway effect of marijuana is better understood: According to the 1994 study by Columbia University's Center on Addiction and Substance Abuse, 12–17 year-olds who use marijuana are 85 times more likely to use cocaine than those who abstain from marijuana. The study further reveals that 60 percent of adolescents who use marijuana before the age 15 will later use cocaine, and 43 percent of teenagers who use marijuana by age 18 go on to use cocaine.

In June, 1997, the National Institute of Health highlighted a study demonstrating that the long-term use of marijuana produces changes in the brain that are similar to those seen after long- term use of other major drugs of abuse such as cocaine, heroin and alcohol.[3] The study further indicated that these changes may increase a user's vulnerability to addiction to other abusable drugs by "priming" the brain to be more easily changed by drugs in the future.

It is important to note that certain cultural institutions, including the music and television industries, are no longer consistently stigmatizing marijuana use as they had in the 1980s. On the contrary, the trend is to glamorize marijuana use. Ambiguous cultural messages about drug use are undoubtedly contributing to the growing acceptance of illegal drug use among adolescents and teenagers.

[3] NIH News Advisory, June 26, 1997, "Effects of Long-Term Marijuana Use on the Brain Shown Similar To Other Addicting Drugs."

Many of the opponents of medical marijuana initiatives are concerned that efforts to label marijuana "medicine" send precisely the wrong message to adolescents and teenagers. Surveys taken after the initiatives clearly validate this concern, with the results indicating a more approving attitude toward marijuana use among teenagers after the initiatives.

Federal Enforcement of Marijuana Laws

Significantly, according to the U.S. Sentencing Commission, the number of federal marijuana defendants dropped from nearly 5,500 in 1993 to 4,234 in 1996, a reduction of 23 percent. At the same time, the average prison sentence imposed for marijuana defendants has dropped from 50 months in 1992 to 44 months in 1996, a reduction of 12 percent. Deputy Attorney General Eric Holder, formerly U.S. Attorney for the District of Columbia, points out "that under the current laws of the District, a drug dealer arrested for selling massive amounts of marijuana—even if the sale is made to children coming home from school—can only be charged with a misdemeanor." Mr. Holder has testified that such a policy encourages dealers to bring marijuana into the District "by the bales." He recommended that the District change its law to make both marijuana distribution and possession with intent to distribute a five-year felony.[4]

After the passage of Proposition 215 in California, the Attorney General and the Director of the Office of National Drug Control Policy announced that federal law would continue to be enforced in the State, and urged State and local officials to continue to pursue marijuana cases. Under this plan, any marijuana seized by State or local law enforcement would be accepted by the U.S. Drug Enforcement Administration, and then destroyed. At the same time, the Administration announced that letters warning of possible federal sanctions would be sent to doctors, federal contractors and others invoking the new law. The Administration also stated, however, that it lacked the resources and the legal authority to respond more aggressively.

HEARINGS

The Judiciary Committee's Subcommittee on Crime held one day of hearings on Wednesday, October 1, 1997, examining the medical marijuana referenda movement in America. Testimony was received from nine witnesses. They were: General Barry McCaffrey, Director, Office of National Drug Control Policy, Executive Office of the White House; Dr. Alan Leshner, Director, National Institute of Drug Abuse, Department of Health and Human Services; James E. Copple, President & CEO, Community Anti–Drug Coalitions of America (CADCA), Alexandria, Virginia; Richard M. Romley, Maricopa County Attorney, Maricopa County, Arizona; Dennis Peron, Director, Californians for Compassionate Use, San Francisco, California; Ronald E. Brooks, Past President, California Narcotic Officers Association, Santa Clarita, California; Dr. Lester Grinspoon, Associate Professor of Psychiatry, Harvard Medical School, Boston, Massachusetts; Dr. Janet Lapey, Executive Director, Concerned

[4] The Washington Post, Editorial Page, December 7, 1996.

Citizens for Drug Prevention, Inc.; and Dr. Roger Pilon, Senior Fellow, Cato Institute, Washington, D.C.

COMMITTEE CONSIDERATION

A Committee Print of the resolution was reported favorably on a voice vote, without amendment, by the Subcommittee on Crime on February 25, 1998. It was introduced on February 26, 1998, as H. Res. 372.

On March 4, 1998, the Committee met in open session and ordered the resolution favorably reported, by voice vote, without amendment, a quorum being present.

VOTE OF THE COMMITTEE

The Committee considered one amendment, offered by Mr. Meehan, to strike the first resolve clause which states that the House of Representatives is unequivocally opposed to legalizing marijuana for medicinal use, and urges the defeat of State initiatives which would seek to legalize marijuana for medicinal use. In its place the amendment would have substituted a clause stating that the House of Representatives considers the available medical and scientific evidence insufficiently reliable at this time to justify the legalization of marijuana for medicinal use, but also considers this issue to be deserving of further study of a controlled and rigorous nature.

The amendment was defeated by a vote of 20–5.

AYES	NAYS
Mr. Conyers	Mr. McCollum
Mr. Watt	Mr. Gekas
Mr. Meehan	Mr. Coble
Mr. Delahunt	Mr. Gallegly
Mr. Wexler	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Pease
	Mr. Rogan
	Mr. Graham (SC)
	Mr. Berman
	Ms. Lofgren
	Ms. Waters
	Mr. Rothman
	Mr. Hyde

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

resentatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

The Committee estimates that there will be no cost associated with this resolution.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H. Res. 372 will have no inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

The first clause of this resolution expresses the sense of House of Representatives that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use.

The second clause states that certain drugs are listed on Schedule I of the Controlled Substances Act if they have a high potential for abuse, lack any currently accepted medical use in treatment, and are unsafe, even under medical supervision.

The third clause states that the consequences of addiction to Schedule I drugs, with particular regard to physical health, highway safety, criminal activity, and domestic violence are well documented.

The fourth clause states that marijuana—which along with crack cocaine, heroin, PCP, and more than 100 other drugs, has long been classified as a Schedule I drug—is both dangerous and addictive, with research clearly demonstrating that smoked marijuana impairs normal brain functions, and damages the heart, lungs, reproductive and immune systems.

The fifth clause states that before any drug can be approved as a medication in the United States, it must meet extensive scientific and medical standards established by the Food and Drug Administration, and that marijuana has not been approved by the FDA to treat any disease or condition.

The sixth clause states that a review by the *Annals of Internal Medicine* of more than 6000 articles from the medical literature evaluating the potential medicinal applications of marijuana concluded that marijuana is not a medicine, its use causes significant toxicity, and numerous safe and effective medicines are available

making the use of crude marijuana unnecessary for medicinal purposes.

The seventh clause states that based upon the scientific evidence and the testimony of the American Medical Association, the American Cancer Society, the National Multiple Sclerosis Association, the American Academy of Ophthalmology, the National Eye Institute and the National Institute of Drug Abuse, marijuana has not met the necessary standards to be approved as medicine.

The eighth clause states that the States of Arizona and California, through state initiatives in 1996, legalized the sale and use of marijuana for "medicinal" use, while the state of Washington in 1997 rejected an initiative to legalize the sale and use of marijuana for "medicinal" use.

The ninth clause states that after the initiative in Arizona, the legislature of the State of Arizona, with the support of a majority of the citizens of the State, passed legislation to prevent the dispensing of any substance as medicine which had not first been approved as medicine by the Food and Drug Administration, thereby preventing marijuana from being dispensed in the State.

The tenth clause states that these States and a majority of States in the United States, as well as the District of Columbia, have been targeted by out-of-state organizations which advocate drug legalization for medical marijuana initiatives in 1998 and 1999, which organizations have provided the majority of the financial support for these state initiatives.

The eleventh clause states that, while some individuals and organizations who support "medical" marijuana initiatives do oppose drug legalization, prominent pro-legalization organizations have admitted their strategy is to promote drug legalization nationally through state medical marijuana initiatives, and, as such, have sought to exploit the public's compassion for the terminally ill to advance their agenda.

The twelfth clause states that marijuana use by eighth, tenth, and twelfth-graders declined steadily from 1980 to 1992, but dramatically increased from 1992 to 1996—353 percent among eighth-graders, 251 percent among tenth-graders, and 184 percent with twelfth-graders, with the average age of first-time use of marijuana younger than it has ever been.

The thirteenth clause states that according to the 1997 survey of Columbia University's Center on Addiction and Substance Abuse, a half-million eighth-graders began using pot in the sixth and seventh grades.

The fourteenth clause states that according to Columbia University's Center on Addiction and Substance Abuse, youth between the ages of 12 and 17 who use marijuana are 85 times more likely to use cocaine than those who abstain from marijuana, and that 60 percent of adolescents who use marijuana before the age of 15 will later use cocaine.

The fifteenth clause states that the rate of drug use among youth is linked to their perceptions of risks related drugs, and the glamorization of marijuana and ambiguous cultural messages about marijuana use are contributing to a growing acceptance of marijuana use among adolescents and teenagers.

The sixteenth clause states that surveys taken in the wake of state "medical" marijuana initiatives indicate a more approving attitude toward marijuana use among teenagers than prior to the initiatives.

The seventeenth clause states that the record of the last two years demonstrates that the more the public learns about the facts behind the "medical" marijuana campaign, the more strongly opposed it becomes.

After these clauses, there are two resolve clauses.

The first of these states that the U.S. House of Representatives is unequivocally opposed to legalizing marijuana for medicinal use, and urges the defeat of State marijuana initiatives which would seek to legalize marijuana for medicinal use. It should be noted that such a resolve is not inconsistent with a due regard for States' constitutional status and rights under the Tenth Amendment to the U.S. Constitution. On the contrary, such a resolve implicitly affirms their status and rights under the Tenth Amendment by simply "urging" that they defeat such misguided initiatives. Such a resolution by the House of Representatives in no way preempts the right or ability of States to consider or pass such initiatives. Rather, the resolution represents an effort by the House to appeal to States in light of the evidence, as summarized in the resolution, and in view of the importance of this issue to the future welfare of our nation's youth.

The second resolve clause calls on the Attorney General to submit a report to the House Judiciary Committee regarding the total quantity of marijuana eradication in the United States each year from 1992 through 1997, and the annual number of arrests and prosecutions for Federal marijuana offenses from 1992 through 1997. This report is to be submitted before the end of the 90-day period beginning on the date of the resolution's adoption. Given the interests of the House Committee on Commerce in this issue, the Judiciary Committee will transmit a copy of the report to the Commerce Committee as soon as the report has been received.

AGENCY VIEWS

No views were provided to the Committee.

COMMITTEE JURISDICTION

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, March 16, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On March 4, 1998, the Committee on the Judiciary ordered reported H. Res 372, a resolution expressing the sense of the House that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use. The resolution urges the defeat of State initiatives which would seek to legalize marijuana for medicinal use and requests the Attorney General to submit a report concerning the total quantity of marijuana eradicated in the United States from 1992 through 1997, and the annual

number of arrests and prosecutions for Federal marijuana offenses during the same period.

As you know, H. Res. 372 was referred primarily to the Judiciary Committee and additionally to the Committee on Commerce. The Commerce Committee has a strong jurisdictional interest in legislation relating to drug abuse, drug treatment, and the use of proscribed drugs for medicinal purposes.

However, recognizing your Committee's desire to bring this resolution expeditiously before the House, I will agree not to assert the Committee's jurisdiction over this particular resolution. By agreeing not to exercise its jurisdiction, this Committee does not waive its jurisdictional interest in the subject matter of this, or related, legislation.

I would appreciate your including this letter as a part of the Judiciary Committee's report on H. Res. 372, and as part of the record during consideration of this bill by the House.

Thank you for your consideration.

Sincerely,

TOM BLILEY, *Chairman.*

TB:ci

cc: Hon. John D. Dingell,
Ranking Minority Member,
Committee on Commerce.

Hon. John Conyers, Jr.,
Ranking Minority Member,
Committee on the Judiciary.

Mr. Charles W. Johnson, III,
Parliamentarian.

U.S. CONGRESS,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 16, 1998.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I have received your letter regarding H.Res. 372, a resolution expressing the sense of the House that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use.

Due to the leadership's desire to move this legislation expeditiously, your agreeing not to assert jurisdiction over this resolution, notwithstanding the Commerce Committee's strong jurisdictional interest relating to drug abuse, drug treatment, and the use of proscribed drugs for medicinal purposes, is appreciated. It is understood that your agreeing not to assert jurisdiction regarding this resolution in no way constitutes a waiver of your jurisdiction in the subject matter of this, or related, legislation.

Your letter will be made a part of the Judiciary Committee's report on H.Res 372, and part of the record during consideration of the resolution by the House. Moreover, a copy of the report requested from the Attorney General in the resolution will be transmitted to your Committee as soon as it is received.

Thank you for your cooperation.

Sincerely,

HENRY J. HYDE, *Chairman.*

HJH:djb

cc: Hon. John Conyers, Jr.,
Ranking Minority Member,
Committee on the Judiciary.

Hon. John D. Dingell,
Ranking Minority Member,
Committee on Commerce.

Mr. Charles W. Johnson, III,
Parliamentarian.

DISSENTING VIEWS ON H. RES. 372

We believe that H. Res. 372 is mistaken in its factual premises, an affront to fundamental principles of federalism, and needlessly cruel.

Let us first make it clear that we are not advocating the legalization of marijuana. We agree that one of the greatest challenges we face as a nation is to keep our citizens—especially our children—away from the debilitating scourge of drugs. We feel every bit as strongly as the majority on this point.

But this resolution is not about legalization of marijuana, or about sanctioning its recreational use in any way at all. This resolution is about the use of marijuana by desperately sick people for whom marijuana may offer some relief from suffering. For these and the following reasons, we dissent.

I. There Exists Substantial Evidence that Marijuana Has Legitimate Medical Uses

The resolution is based on the premise that scientific evidence clearly shows that inhaled marijuana has no medical uses. That premise is incorrect.

There is little doubt that inhaled marijuana does have a physiological effect on the human body. (Indeed, it is precisely because marijuana does affect the body that it is proscribed under the Controlled Substances Act.) There is also widespread agreement that, as the majority observes, the effects of marijuana on the human body are generally harmful.

But that does not end the inquiry. Many substances used as medicines have harmful side effects. The question is whether the substance also has benefits when used as part of a course of treatment for a particular disease, and if so, whether those benefits outweigh the risk of harm.

There is credible evidence that marijuana can benefit patients suffering from certain diseases. The most well-substantiated medical uses of marijuana are to counter nausea and vomiting caused

by chemotherapy,[1] and to treat glaucoma.[2] The benefits of marijuana for cancer patients are so well established that a 1991 survey of clinical oncologists found that 44% of the respondent doctors said they had, on at least one occasion, recommended that a patient procure and inhale marijuana—despite the fact that such conduct is illegal.[3] In fact, during the Judiciary Committee meeting at which H. Res. 372 was considered, one Member of the Committee related the poignant experience of a cancer patient he knew personally who had used marijuana to ease the agonies of chemotherapy.[4]

Considerable research also attests to the use of marijuana in stimulating the appetites of AIDS sufferers afflicted with "wasting syndrome."[5] The clinical research on this use is less definitive than in the case of cancer patients, primarily because U.S. researchers have had difficulty gaining approval for their studies in recent years.[6] However, as with chemotherapy, it is clear that many physicians who deal with AIDS patients every day believe that for some of these patients marijuana can be useful as part of a course of treatment, and that many patients are in fact illicitly seeking relief through the use of marijuana.[7]

The majority argues that, to the extent inhaled marijuana does have medical benefits in certain cases, there are alternative medications (such as synthetic THC, which is the active ingredient in marijuana) which do not have the harmful side effects that marijuana has. For two reasons, this argument is unpersuasive.

First, not all patients respond to the alternatives. As doctors know, almost all ailments can be treated with more than one medication, and no medication is effective in 100% of the patients to whom it is administered. It is standard medical practice to pick the most appropriate treatment for a particular patient, and if the patient does not respond, to try another treatment. The studies cited above establish that for some patients, inhaled marijuana will be effective where alternative treatments fail.

Second, in the cases of patients suffering from life-threatening diseases such as cancer and AIDS, the harmful effects of marijuana which are quite long-term—pale beside the benefit of making a life-saving course of treatment tolerable. To a 65-year-old brain cancer

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[1] See, e.g., Vinciguerra, *Inhalation Marijuana as an Antiemetic for Cancer Chemotherapy,* New York State Journal of Medicine 525–527 (October 1988) (among chemotherapy patients showing no improvement with standard antiemetics, 78% responded positively to marijuana); Chang, *Delta-9-Tetrahydrocannabinol as an Antiemetic in Cancer Patients Receiving High Dose Methotrexate,* 91 Annals of Internal Medicine 819–24 (December 1979) (smoked marijuana more reliably reduces vomiting than oral THC); Salla, Zinberg & Frei, *Antiemetic Effect of Delta- 9-Tetrahydrocannabinol in Patients Receiving Cancer Chemotherapy,* 293 New England Journal of Medicine 795–97 (1975) (natural marijuana more successful than synthetic THC for some patients).

[2] See, e.g., Hepler and Frank, *Marijuana Smoking and Intraocular Pressure,* 217 Journal of the American Medical Association 1932 (1971); Hepler, Frank and Ungerleider, *Pupillary Constriction After Marijuana Smoking,* 74 American Journal of Ophthalmology 1185–90. (1972).

[3] Doblin, *Marijuana as Antiemetic Medicine: A Survey of Oncologists Experiences and Attitudes,* 9 Journal of Clinical Oncology (July 1991).

[4] See transcript of meeting of the Committee on the Judiciary, March 4, 1998 (statement of Hon. James Rogan).

[5] See Lester Grinspoon and James B. Bakalar, Marijuana, the Forbidden Medicine 100–09 (1997); Ed Rosenthal, Tod Mikuriya and Dale Gieringer, Medical Marijuana Handbook 35–38 (1997); see also Roltin, Fischman and Byrne, *Effects of Smoked Marijuana on Food Intake and Body Weight of Humans Living in a Residential Laboratory,* 11 Appetite 1 (1988).

[6] See "Government Blocks UCSF Marijuana Study" in Bay Area Reporter, September 14, 1995; "U.S. Drug Agencies Resist AIDS Medicinal Pot Plan: S.F. Doctor's Study in Treating Wasting Syndrome Hits Stone Wall" in San Francisco Examiner, January 8, 1995, at A–1.

[7] See generally R.C. Randall, Marijuana & AIDS: Pot, Politics & PWAs in America (1991).

victim whom chemotherapy would, without marijuana countertreatment, render an invalid, the majority's concerns about marijuana's long-term harm to lungs, reproductive and immune systems must seem laughably absurd.

To be sure, we are not suggesting that there is a consensus in the medical community that marijuana is an effective medicine. We concede the majority's point that many physicians, and a number of the most highly-respected physician organizations, do not support the use of marijuana for medical purposes. We do insist, however, that this as an issue for doctors, their patients and public health officials to resolve, not the Congress. There are too many desperately sick people whose physicians believe marijuana might be helpful, and too much solid research in support of that view, for Congress to state an unequivocal opposition to the medicinal use of marijuana.

II. H. Res. 372 Offends Basic Principles of Federalism

In November 1996, voters in California and Arizona adopted referenda purporting to authorize seriously ill patients to take marijuana upon the recommendation of a licensed physician. The Arizona referendum was subsequently nullified by the Arizona legislature, but the California referendum remains nominally in effect (although Federal agencies have countered the referendum by threatening federal penalties against any physician who makes such a recommendation).

H. Res. 372 appears to be intended largely as a denunciation of these referenda, and as an attempt to intimidate other States from following suit. As such, we believe it is an inappropriate incursion by the Congress into territory that properly belongs to the States.

Under our constitutional system, the States have the primary responsibility for protecting the health and safety of their citizens. If a State, by referendum or legislative enactment, adopts the policy that marijuana can provide some relief to those of its citizens who are suffering from AIDS or cancer, it is the height of Washington-centered arrogance for the Congress to override that State's position.

III. The Sweep of H. Res. 372 is Needlessly Cruel

The majority seems to believe that efforts to make marijuana available to sick people for medicinal use is tantamount to legalization. That is simply not true. Let us be clear again: We absolutely do not support those who would take advantage of "medicinal use" programs to make marijuana available to the general public. To the extent that this resolution is a condemnation of such subterfuges, or a statement that marijuana should not be available for minor ailments, it is appropriate.

But the resolution goes way beyond that. The resolution expresses an "unequivocal" and unqualified opposition to medicinal use of marijuana. Thus the resolution brings within its ambit cases in which marijuana may enable a terminally ill AIDS patient suffering from wasting syndrome, or a cancer patient receiving chemotherapy treatment, to ingest sufficient nutrition to regain some semblance of normal activity.

The majority cannot claim that it was unaware of the scope of its resolution. There was ample discussion of this point in the Judiciary Committee. Indeed, Rep. Conyers offered an amendment that would have moderated the resolution as it applies to AIDS and cancer patients—but this effort was rejected. There is no reason the majority could not have tailored the resolution to direct its opprobrium squarely at the excesses associated with the medical marijuana movement. To condemn terribly ill patients who are trying simply to relieve their suffering—patients who, it should go without saying, would give anything not to be forced to look to marijuana for such relief—is needlessly cruel.

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