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To:
The Honorable Assemblyman Thurston Smith
33rd Assembly District
P.O. Box 942849
Sacramento, CA 94249-0033

Subject: Proliferation of Illegal Marijuana Cultivation Farms in California Rural Communities

Dear Assemblyman Smith,

The Homestead Valley Community Council (HVCC) was formed in 1996 to address all matters affecting the Morongo Basin unincorporated communities of Yucca Mesa, Flamingo Heights, Landers, and Johnson Valley. We are comprised of delegates appointed through the community associations of each of these member communities. Member Johnson Valley is a proud community in your district.

HVCC works with local, county, state, and federal lawmakers on matters of mutual interest, which is why we are writing you today. No matter has been more devastating to our communities than the ongoing proliferation of illegal marijuana grow farms, now reaching a magnitude of indescribable epic proportion.

History and Facts

As you know, 57% of California voters approved *The Control, Regulate and Tax Adult Use of Marijuana Act* (AUMA) under the ballot title "Proposition 64" on the November 2016 ballot. The provisions of Prop 64 went into effect on January 1, 2018.

Prop 64 makes adult consumption of marijuana legal, allows those who use marijuana to discreetly grow small quantities for personal use, and authorizes municipalities to license and regulate legal growers and retailers.

The voters likely found Prop 64 palatable because it promised the end of illicit black-market production and sale of marijuana in California communities, while also promising hundreds of millions of dollars in generated tax revenue to cover costs of administration, substance treatment, increased law enforcement, and community investment to “*reduce the illicit market*” and “*incapacitate the black market*” while creating job opportunities.

California became the fifth western state to legalize the consumption of marijuana upon the passing of Prop 64, joining Washington, Oregon, Colorado, and Nevada. Two more western states have since passed laws legalizing adult marijuana consumption: Arizona and Montana. Of these seven western states, California is the only state experiencing widescale illicit marijuana growing farms operating with impunity and devastating rural communities across the state.

HVCC believes it is not the legalization of marijuana consumption that has led to this proliferation of illegal farms. After all, other states with similar legal consumption laws do not have this problem. The cause of this massive scourge is the inexplorable and misguided language in Prop 64 that decriminalizes illegal marijuana production and sale by modifying California Health and Safety Code sections 11358 and 11359.

Sections 11358 and 11359 of the Health and Safety Code

Section 11358 of the CA Health and Safety Code has always addressed illegal cultivation of marijuana. Section 11359 has always addressed illegal distribution and sale. For decades violations of each section led to felony charges with the potential for substantial jail time and fines.

The following data outlines the penalties for illegal growing and/or sales of illicit marijuana in the seven western states with legalized marijuana laws and similar health and safety codes. (source: <https://norml.org/laws>)

Oregon

FELONY 5 yrs imprisonment and \$125,000 fine. If near school 20 yrs imprisonment and \$375,000 fine

Washington

FELONY 5 yrs imprisonment and \$10,000 fine - DOUBLED if near school, bus stop, or public park

Nevada

FELONY WITH MANDATORY MINIMUM SENTENCE from 1 yr to life imprisonment depending on quantities. Fines \$5000 to \$200,000

Colorado

FELONY 6-30 plants 6 mo to 2 yrs jail and \$100,000 fine. 30 up plants FELONY 2-6 yrs imprisonment

Montana

FELONY 2 years - life imprisonment and \$50,000 fine

Arizona

FELONY 6 plants or more 9 months - 7 years and \$150,000 fine

California (pre- Jan 2018 enacting Prop 64)

FELONY up to 3 yrs imprisonment and \$10,000 fine under Health Safety Code sections 11358(cultivation) and 11359(sale)

California (after Jan 2018 enacting Prop 64)

MISDEMEANOR maximum 6 months jail / maximum \$500 fine under Health Safety Code sections 11358(cultivation) and 11359(sale). Can be a FELONY but only after 2 or more prior convictions.

Every one of the seven states EXCEPT CALIFORNIA maintained their felony penalties for illegal growing and selling marijuana, after passing legal marijuana consumption laws like Prop 64.

It is no coincidence the illicit pot farms began appearing in residential California neighborhoods in the spring of 2018. It is clear to HVCC that the downgrading of penalties for illegal growing and selling marijuana from the decades-long felony charge to the new misdemeanor level, established solely by Prop 64, is the cause for this proliferation of illegal growing and selling of marijuana in our communities.

It should be noted, because of the lower misdemeanor penalty, we understand the San Bernardino County District Attorney rarely prosecutes these cases. We find this increasingly frustrating since Prop 64 does allow for felony charges and penalties after two or more prior misdemeanor convictions.

San Bernardino County Sheriff John McMahon has publicly referred to the challenges of shutting these operations down as “playing whack-a-mole.” They raid a farm and the growers move on to a new parcel. Sometimes they restart operations at the same farm. They have nothing to fear and little to lose with this lack of legal repercussion, only practiced in one of the seven western states with legalized marijuana - California.

Prop 64 has created the conditions it promised the voters it would help eliminate!

Prop 64 is loaded with language that led the voters to believe it would address unlicensed, unregulated illegal growing and untaxed black-market sales. It has done neither: instead it has exponentially expanded this activity. The following statements are taken directly from Prop 64 as it was presented to the voters. Most relevant to this matter are Section 2 and Section 3.

Section 2. Findings and Declarations

(C) Currently, marijuana growth and sale is not being taxed by the State of California, which means our state is missing out on hundreds of millions of dollars in potential tax revenue every year. The Adult Use of Marijuana Act will tax both the growth and sale of marijuana to generate hundreds of millions of dollars annually.

(D) Currently, children under the age of 18 can just as easily purchase marijuana on the black market as adults can. By legalizing marijuana, the Adult Use of Marijuana Act will incapacitate the black market, and move marijuana purchases into a legal structure with strict safeguards against children accessing it.

(H) By bringing marijuana into a regulated and legitimate market, the Adult Use of Marijuana Act creates a transparent and accountable system. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety.

HVCC asks, how does the illegal cultivation and sales of marijuana resulting from the downgrade of felony penalties to misdemeanor penalties in Prop 64 contribute any tax revenues? We are losing millions of dollars in potential tax revenue through this illicit activity.

Illegal marijuana now grows on private land in California on a massive scale since enacting Prop 64, with no end in sight. The black market and the potential for children under the age of 18 to obtain this untaxed, unregulated marijuana has never been greater. We know from local law enforcement that Prop 64 has made it harder to crack down on the underground black-market. Violent drug cartels and gangs are thriving and public safety is threatened. Prop 64 has FAILED in its Findings and Declarations.

Section 3. Purpose And Intent

(a) Take nonmedical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors and protects public safety, public health, and the environment.

(b) Strictly control the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana through a system of state licensing, regulation, and enforcement.

(s) Tax the growth and sale of marijuana in a way that drives out the illicit market for marijuana and discourages use by minors, and abuse by adults.

(t) Generate hundreds of millions of dollars in new state revenue annually for restoring and

repairing the environment, youth treatment and prevention, community investment, and law enforcement.

(u) Prevent illegal production or distribution of marijuana.

(v) Prevent the illegal diversion of marijuana from California to other states or countries or to the illegal market.

(w) Preserve scarce law enforcement resources to prevent and prosecute violent crime.

It is patently clear to HVCC the reality experienced after the enactment of Prop 64 is just the opposite of the act's Purpose and Intent.

A significant portion of marijuana production and sales lies in the hands of the illegal market, untaxed, unregulated, and occurs in plain sight because the owners of these illicit farms have no fear of felony prosecution.

Subsection (U) is particularly laughable – Prop 64 will “*prevent illegal marijuana production and sales.*” If the writers and proponents of Prop 64 actually meant this, they would not have downgraded Health and Safety Code sections 11358 and 11359 penalties from a felony to minor misdemeanor charges.

Furthermore, HVCC contends if the voters knew Prop 64 would lead to such a massive expansion of illicit marijuana growing and selling in communities all over California, it likely would not have passed. The downgrading of sections 11358 and 11359 was not explained in the ballot summary, and worse yet, it was only written into the final pages of the 72-page proposition.

HVCC is not questioning or challenging 99.9% of the proposition or what the voters approved. We understand adult legal marijuana consumption and personal small-scale cultivation is here to stay. We understand municipalities now have the authority to license and regulate legal marijuana cultivation and permit retail stores.

We are not suggesting the repealing of Prop 64. We are simply challenging one single sentence in Prop 64 Section 8.2 that changed the HSC 11358 illegal

cultivation penalty from a felony to a minor misdemeanor, and one single sentence in Prop 64 Section 8.3 that likewise changed the HSC 11359 illegal sale penalty from a felony to a minor misdemeanor.

Again, these two single-sentence changes made through the passing of Prop 64 contradict and destroy the proposition's Purpose and Intent, and Findings and Declarations. The heartbreaking devastation by illegal marijuana cultivation in communities all over California after the passing of Prop 64 cannot be denied.

HVCC understands Prop 64 is a voter-approved initiative. Historically the legislature has largely respected the will of the people when such voter initiatives are approved by ballot. We also understand that in some cases, the legislature can intervene when voter-approved propositions fail to address matters they should have addressed or fail to achieve the Purpose and Intent as stated to the voters. If there ever was a proposition that failed on its promises, we cannot imagine a bigger failure than Prop 64.

Please consider a legislative remedy to HSC Section 11358 and HSC Section 11359, returning the penalties for violations of these codes to felony classification. We don't see any other option to end this horrible scourge. Every day we see more and more of these farms going up. It will continue to get worse if nothing is done at the state level. We are begging for help in freeing our communities from this criminal activity that has caused good people in wonderful California communities to live in fear since the passing of Prop 64.

Sincerely,

James Harvey

A handwritten signature in black ink that reads "James Harvey". The signature is written in a cursive, flowing style.

President, Homestead Valley Community Council
(On behalf of HVCC)