Public Comment Before the Committee on Veterans and Legal Affairs Opposing L.D. 301, L.D. 353, and L.D. 421

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Senator Luchini, Representative Caiazzo and members of the Committee on Veterans and Legal Affairs:

My name is Hannah King. I am a partner at the law firm of Drummond Woodsum, a full service law firm located in Portland, Maine. I am the founder and chair of the firm's Regulated Substances Practice. In that capacity, I represent over 300 cannabis businesses. I also advise investors, financial institutions, accounting firms, municipalities, and tribal nations on issues related to the marijuana industry. I have represented stakeholders before the Marijuana Legalization Implementation Committee and the Health and Human Services Committee since 2016, and was before this Committee when it took up its first marijuana bills last session. I was appointed to the Marijuana Advisory Commission by former Speaker of the House Sara Gideon as representative of the adult use marijuana industry. That appointment was recently renewed by Speaker of the House Ryan Fecteau.

I am here today on behalf of Maine Organic Therapy and Remedy Compassion Center, two of the eight registered medical marijuana dispensaries in the State of Maine, and Curaleaf Maine, which has several pending adult use licenses. Their operations and prospective operations are located in Biddeford, Auburn, Ellsworth, South Portland, Wells, and Bangor. Once fully operational, their investment in these locations will be around 30 million dollars. Together, they currently employ 75 Maine residents. Curaleaf Maine anticipates employing an additional 75 Maine residents once its adult use licenses are operational.

We are opposing L.D. 301, L.D. 353, and L.D. 421 for a number of reasons, which are laid out below. However, the main reason we are taking this position is that now is simply not the time to make piecemeal, substantive changes to either the medical or adult use marijuana programs. The Office of Marijuana Policy is in the middle of rulemaking to implement the overhaul of the Medical Use of Marijuana Program that went into effect in December 2018. They are also working to roll out the adult use marijuana program, which is still in its infancy. Both the overhaul of the medical program and the Marijuana Legalization Act were the result of years of effort by their respective legislative committees. These are also comprehensive pieces of legislation, with interwoven policy decisions. Based on the foregoing, it would be imprudent to make any substantive changes to either program at this time. If, however, the Committee is willing to entertain such changes, they should not be made without careful consideration of the existing framework for regulating adult use and medical marijuana operations.

1. ***L.D. 301 "An Act Regarding Adult Use Marijuana"***

Based on the bullet points circulated to Committee Members on Friday, this bill would make several substantive changes to both the medical and the adult use marijuana laws. The first is that the proposal to allow for the downstream flow of products in the adult use market would require an amendment to the law that would expand the current authorized conduct of a licensed cultivation facility to include conduct that is currently only authorized for licensed manufacturing facilities. Specifically, it would allow cultivation facilities—which under current law can only possess and package flower, trim, and pre-rolls—to possess, package and sell value added products (become a packaging and distribution center).

This is problematic for several reasons. **First, municipalities have been making decisions about what types of marijuana establishments to allow in their communities based on the current scope of authorized conduct.** One of the core policy decisions of the MLI Committee was that municipalities should have control over how and if adult use commercial activities were allowed, and in what form within their communities. The reason for this is that while the majority of people voted to legalize marijuana, a minority of municipalities supported legalization. Changing the authorized conduct of a cultivation facility will undermine the local decision making process, a process that takes months and in many cases years. The "opt-in" process involves elected officials and often a town vote that includes all residents in the community. There are some municipalities that voted to allow adult use marijuana cultivation facilities but prohibit all other types of adult use marijuana establishments. Part of the reason for this is that towns cannot prohibit registered caregivers from cultivating medical marijuana, and the land use is essentially the same if you are cultivating adult use marijuana instead of medical marijuana. Expanding a cultivation facility to become a packaging and distribution center for all types of marijuana products would have a significantly different impact.

Second, this change will make it difficult to police conduct that is a violation of the law. While cultivators will be able to possess and distribute value added products, they will still be prohibited from manufacturing these products. If cultivators are allowed to possess value added products, it will be difficult for OMP to distinguish between products possessed by the cultivator—which would be allowed—or produced or further refined by the cultivator—which would not be allowed.

Third, it is unnecessary. Should a licensed cultivator want to package, brand, and distribute value added products, they can apply for a manufacturing license (which you can get just to package and distribute value added products). They also can contract with a licensed manufacturing facility to white label and distribute value added products for them.

The bullet points also propose to make the registration process under the medical marijuana program less transparent. The provision that would "create one card" for all registered participants, including caregivers, employees, and contractors, would mean that caregiver employees would no longer be registered to a specific caregiver. The law prohibits caregiver collectives, with the exception of caregivers being employed by other caregivers, and limits the size of caregiver operations. Businesses try to circumvent the limitations on the size of caregiver operations by filling large warehouses with multiple caregivers all working for each

other (creating one large operation). Right now, because caregiver employees are required to be registered with a particular caregiver, there is some way for OMP to police these illegal business models. If you remove the reporting requirement from the employee registration process, these illegal operations will be able to operate with impunity.

As discussed below, if caregivers want to expand and operate large cultivation operations, they will be able to apply for a dispensary registration. In that instance, all the employees will only have to register with the dispensary, naturally streamlining the process.

1. ***L.D. 353 "An Act To Establish Medical Marijuana Cooperatives" and L.D. 421 "An Act to Increase the Number of Plants a Medical Marijuana Caregiver May Cultivate"***

Both bills propose to expand the size and scope of caregiver operations. Important policy decisions were made based on limits in the size of caregiver operations under state law (limited regulation and prohibiting towns from limiting or prohibiting caregivers). Despite expanding the size and scope of caregiver operations, neither bill addresses local authorization or amends the regulations as they apply to caregivers. This legislature should not simply expand the scope and size of caregiver operations without also revisiting the regulations and local authorization requirements as they apply to caregivers. In addition to being bad public policy, there are other options for a company or individual to operate a larger medical marijuana operation, as explained below, rendering these proposed changes wholly unnecessary.

In considering these bills it is critical to understand two things. First, unlike every other type of marijuana business, medical and adult use, towns cannot prohibit caregivers from operating within their communities and cannot impose a limit on the number of caregivers. Thus, even if your town's comprehensive plan is rural residential with no industry or commercial activity, you could not prohibit a warehouse intended for a caregiver operation. The reason for this is that by law, caregivers are intended to be small operations (limited to 30 flowering plants of 500 square feet of flowering canopy), owned and operated by a single individual (the registered caregiver). Because of these statutory limitations, the thinking was that the land use impact would be minimal (these operations would not be large enough to warrant a warehouse) and, thus, should not require local authorization. **If you expand the permissible size and scope of these operations, you are increasing the land use impacts, while continuing to prohibit municipalities from having any say over whether these operations can site within their communities.**

Second, the cap on the number of dispensaries allowed to operate in the state was automatically repealed on January 1, 2021 and any person or company that wants to be a dispensary will be able to apply for a dispensary registration in late spring 2021. This is important because like caregivers, dispensaries are medical marijuana businesses that are permitted to cultivate, manufacture, and sell marijuana. However, unlike caregivers, there is no restriction on the number of plants they can grow or the number of owners of the business. That is, **if a caregiver would like to operate as a multi-member company instead of a sole proprietorship or would like to have a larger plant canopy, they will already be able to apply for a dispensary registration, which will allow them to do both.** Further, the law was amended not long ago to allow caregivers who wanted to grow more than 30 flowering plants to apply for a registration to

cultivate an unlimited number of plants within a 500 square foot area. That is, if a caregiver wants to grow 60 plants, there is a way for them to do that without increasing the maximum plant count for caregivers.

From a process perspective, I am also very concerned that **L.D. 353 remains a concept draft with no indication of what the bill, if passed, would accomplish. For that reason alone this bill should be voted down.** Based on the title, the intent behind the bill appears to be to allow caregiver collectives—caregivers working together to assist one another's businesses—something that is expressly prohibited by law. Currently, the only ways that caregivers are authorized to assist other caregiver businesses would be by one caregiver employing another or through wholesale transactions of marijuana and marijuana products. The reason collectives are prohibited is that caregivers are subject to fewer regulations than other marijuana businesses. As explained above, caregivers will be able to apply for dispensary registrations that would allow them to partner with other caregivers and/or investors if they want to expand their business model. Unlike in the past, the dispensary registration process will not be competitive or merit-based so all caregivers will have an opportunity to obtain one of these registrations if they so choose. This option is obviously preferable to amending the law to make caregiver collectives legal because those collectives would not require municipal approval, would be subject to limited regulation, and there would be no mechanism for the Office of Marijuana Policy to be notified of their existence or operation.

In sum, it is important to carefully consider the existing framework for regulating caregivers before passing legislation that would once again increase the scope of these operations, without making further adjustments to state and local approval processes. Caregivers have historically been subject to minimal state and local regulation because they were initially small-scale businesses: a single individual serving a small number of patients. It would be poor public policy to allow these proposed amendments to move forward without addressing the fact that municipalities have no say in whether these businesses can operate in their communities, and without increasing regulatory standards for the proposed larger-scale operations.