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**Sub House Bill 86 Opponent Testimony**  
**Ohio Senate General Government Committee**  
**December 5, 2023**

Chairman Rulli, Vice Chairman Huffman, Ranking Member DeMora and members of the Senate General Government Committee, thank you for the opportunity to provide opponent testimony on Sub House Bill 86. My name is Daniel Kessler, and I am the Co-founder and CEO of Riviera Creek, a Level I cultivator and processor of medical cannabis in Youngstown, OH. I am a lifelong resident of Ohio, and I am a third-generation employer in Northeast Ohio where my family has been in the manufacturing business there for over 100 years, in multiple industries, employing hundreds of Ohioans. I also sit on the Board of Directors of the Ohio Cannabis Coalition (OHCANN), the Ohio marijuana trade organization.

As a lifelong Ohioan and a father, I am in full support of implementing an adult use marijuana policy centered around strong protections for children, public safety, and public health. It is critical we protect our children from accidental ingestion, keep impaired drivers off our roads, and continue to enjoy Ohio's public spaces free from marijuana smoke. But I want to stop for a minute to point out that the major threat to our children, public safety and public health isn't a highly regulated adult use marijuana market - it's the illicit market.

**Playing by Different Rules: *the illicit market***

Underlying every new adult use program is the hope that regulated marijuana will bring about the end of the illicit market. However, time and time again we have seen that theory fail in practical application when states over-regulate and over tax the new adult use market.

The illicit market doesn't play by the same rules:

- it doesn't pay any taxes,
- it uses toxic pesticides and fertilizers to grow plants,
- its products don't have to pass lab tests for heavy metals, mold, and harmful chemicals,
- it can sell to anyone – and actively markets to children in packaging that looks like familiar candy,
- it doesn't have a potency cap, it can sell 100% THC products, and
- it has laced marijuana with fentanyl.

In contrast, a licensed marijuana business like Riviera Creek grows cannabis under hundreds of security cameras, in a controlled pharmaceutical-grade environment. Commerce maintains a strict list of approved benign pesticides and fertilizers and has established some of the strictest testing limits and inventory control practices in the country. These measures are necessary to ensure Ohio marijuana consumers have access to safe products, but they significantly add to the cost of finished products. For all these reasons, legal products will always cost more than illicit products.

My business is attempting to compete with a highly lucrative illicit market that has been operating successfully and illegally since the federal government designated marijuana as Schedule I in 1937. How is a small Ohio business like Riviera Creek supposed to compete if my products are forced to be diluted to 25% potency on flower and 50% potency on extracts and are then subjected to an estimated 43.5% increase in the price consumers will pay due to the multiple taxes being levied?

**For the illicit market to fail the regulated market must thrive. I'm going to say that again. For the illicit market to fail the regulated market must thrive.**

In other words, if we flip this issue on its head and start talking about how to create a robust adult use program that can compete with the illicit market, compete with Michigan's adult use market, and generate substantial tax revenue, our chances of winning increase significantly.

### **Potency:**

First, we need to be able to sell consumers the marijuana products they want at a price they can afford. Because flower potency is naturally occurring, we cannot simply control the level, which means we might have to take three months painstakingly growing the plant just to have to destroy it because of a naturally occurring attribute. I am not sure if anyone here grows flowers in their backyard garden, but if you have a two rose bushes in your yard, and the roses from the one are significantly more fragrant than another, you would not destroy the more fragrant roses, just because they are more fragrant. That is what capping a naturally occurring characteristic would be analogous to.

We need to be able to sell 90% THC products. Michigan and the illicit market don't even have a THC cap. A cap lower than our medical program would be devastating to Ohio businesses like mine. Today, vapes and concentrates comprise 31% of Ohio's medical marijuana market. In Pennsylvania, they make-up 45% of the market and in Illinois 37%. Neither of those states have potency limits. In fact, most states don't have potency limits. No one is going to buy a 50% THC vape cartridge. If Ohio sets the potency limit for adult use extracts at 50% and flower at 25% my business will lose millions in potential revenue to Michigan and the illicit market. **That translates to Ohio losing 40% of the projected tax revenue, or up to around \$200M annually.**

Public safety is another reason to avoid potency caps. Any product that is inhaled into the lungs needs to be as pure as possible, otherwise consumers are inhaling fillers. In 2019, a filler found in e-cigarette and illicit marijuana vapes called vitamin E acetate was linked to thousands of severe lung injury cases resulting in dozens of deaths. In the wake of the vape crisis, it is important to note that in previously deliberated proposals (Senate Bill 261 and Senate Bill 9) the General Assembly proposed a 90% potency cap.

Additionally with public safety in mind, another example, of how potency limits make products less safe: if a consumer is uses a product with 45% potency, they will have to inhale 2x more than if the product contains 90% potency. Ohioans are not going to pay MORE for diluted versions of the products they have been buying from Michigan and the illicit market for years. We already have this problem with potency in the medical program. We recommend setting the potency cap for both adult use and medical marijuana at 90%.

### **Taxes:**

Second, we need a competitive tax rate. Michigan's effective tax rate is 16% (10% marijuana tax and 6% sales tax). The initiated statue set a marijuana tax rate of 10%, plus state and local sales tax, resulting at an effective tax rate of 16.75% - 17.8%, depending on county. That rate is low enough to compete and high enough to generate significant tax revenue. Sub HB86 proposes an effective tax rate of up to 43.53% after compounding - one of the highest in the country - by applying a 15% gross receipts tax on cultivation and a 15% retail tax at the dispensary, along with sales tax. It is inevitable the cultivation tax will be passed on to consumers as a higher retail price, essentially compounding the tax.

Illinois takes a similar approach to marijuana taxes, resulting in an effective tax rate of between 29% and 43%, depending on the type of product. Illinois consumers are flocking to Missouri to purchase marijuana at the low 9% tax rate. A study conducted by the Illinois Policy Center concluded that Illinois' cannabis revenues are the second lowest in the nation proportional to the size of its economy. *The study goes on to say, "besides failing to bring in as much revenue as it could, Illinois' restrictive legal cannabis market could also be helping to grow the illegal market – and the crime associated with it."*

A recent Crain's Cleveland article said Ohio's adult use tax hit the "sweet spot" – not so low it doesn't generate significant tax revenue and not so high it sends customers running to the illicit market or Michigan. Why would consumers stop buying from the illicit market or Michigan when the only other option is to buy a legal product that is even less potent and more than twice the price of an illicit product? We recommend setting the effective tax rate close to Michigan's to allow Ohio to compete.

### **Expediency:**

Finally, you don't have to look hard to find an example of what happens when a flailing adult use program allows the illicit market to not only perpetuate, but to begin operating openly. New York legalized marijuana in 2022. Since then, 463 dispensary licenses have been awarded but only 21 licensed dispensaries have opened. It is estimated over 5,000 illicit shops are operating across the state without any regulation. Forbes estimates unlicensed cannabis dispensaries and illegal marijuana sales could cost New York \$2.6 billion in tax revenue over the next seven years. Sub HB86 proposes a twelve-month delay on regulated adult use sales, signaling to the illicit market that Ohio is open for business. These illicit shops which have already started opening in Ohio, are willing to sell to anyone of any age, they do not ask for ID, they do not test their products, and they do not pay taxes.

Ohio's medical marijuana operators are the best solution to quickly deploy new dispensaries across the state. We are familiar with Ohio's strict regulations. When Ohio held a dispensary lottery to award new dispensary licenses it took the inexperience winners almost two years to become operational, and some aren't even online yet. Ohio can't risk a twelve-month delay if we want to avoid the pitfalls of New York. **Existing operators can open new dispensaries quickly and compliantly, preventing illicit shops from boldly operating in their place.**

### **Conclusion:**

It isn't every day a new source of tax revenue is created by an industry that previously didn't exist. Adult use marijuana has the potential to generate hundreds of millions of dollars in new tax revenue, employ thousands of Ohioans, and severely dampen the illicit market. But none of this is guaranteed. The marijuana industry has a very experienced competitor in the illicit market, and it is playing by a different set of rules.

All the issues I've mentioned today are interconnected. Commerce can require marijuana businesses to package their products in child resistant containers, but Ohioans won't buy regulated products if the cost is too high or the potency too low. Instead, they will continue to buy illicit marijuana that is less expensive, more potent and packaged to look just like regular candy. How do we protect children, promote public safety, combat the illicit market and generate substantial tax revenue for Ohio? By creating a thriving, competitive regulated adult use market.

Thank you. I welcome the opportunity to answer questions.

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