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**VIA ELECTRONIC MAIL**

February 24, 2010

The Honorable Tom Massey  
Colorado House of Representatives  
The Honorable Chris Romer  
Colorado Senate  
State Capitol  
Denver, Colorado

**Re: Comments on HB 10-1284**  
**Regulate Medical Marijuana**

Dear Representative Massey and Senator Romer:

Thank you for requesting that I provide you a detailed critique of your bill, HB 10-1284, introduced as a “Regulate Medical Marijuana” bill. I enjoyed Representative Massey’s debate last week against my wife Jessica Corry Esq. at Colorado Christian University. As someone who argues with Mrs. Corry on a daily basis, I certainly sympathized. But this time, she is right and you are wrong.

HB 1284 is a 45-page “big government” multilayered bureaucratic monstrosity that would make any Soviet apparatchik proud. It is inconsistent with “limited government” principles Rep. Massey’s says he favors, and with American notions of freedom and free enterprise. In reading through this bill, I was struck by a sense of déjà vu. This bill is worse than Senator Romer’s initial proposal that he wisely pulled the day after I submitted a detailed line-by line analysis of it. ([http://www.huffingtonpost.com/chris-romer/colorado-medical-marijuan\\_b\\_417488.html](http://www.huffingtonpost.com/chris-romer/colorado-medical-marijuan_b_417488.html) Sen. Romer: “So my attempts to bring medical marijuana out of the shadows through a complex regulatory structure are now over.”)

HB 1284’s complex regulatory structure cannot be supported by any patient, caregiver, or compassionate Colorado voter who voted “yes” on

Amendment 20, now codified as a constitutional right in Article XVIII § 14 of the Colorado Constitution you swore to uphold.

Colorado has nothing to fear from an active, economically viable, medical marijuana industry bringing relief to suffering patients. We understand that some rogue DEA agents are somehow able to muster intense hatred against the theoretical concept of a disabled Vietnam veteran in a wheelchair sitting alone in his basement gaining some small relief from a plant, but public “servants” such as these should be ignored in the formulation of public policy. And make no mistake: the Five Patient Limit you propose was first proposed by the DEA, according to sworn court testimony of State officials in a 2007 lawsuit I successfully brought against Governor Ritter and the Colorado Department of Health challenging the Five Patient Limit.

On a personal note, I appreciate our collegial and respectful interaction and look forward to our scheduled lunch on February 26, 2010, but diplomacy is no replacement for substance. My clients who live with disabilities do not value compromise for its own sake. My clients’ lives literally depend on their access to medical marijuana, and we will fight in the legislative, executive, and judicial branches, against any government proposal or enactment that would restrict supply, as would HB 1284.

Your bill would reduce the selection and quality of this organic medicine, driving most of the supply back to the dangerous (un-taxable) criminal underground. The community is already improving quality and supply without government “assistance.”

### **General Constitutional Concerns**

The Colorado Constitution Article XVIII § 14 establishes a constitutional right to medical marijuana. The entirety of HB 1284, as well as the entirety of SB 109, violates the Colorado Constitution, Article XVIII § 14(8), which provides that the legislature must enact implementing legislation “no later than” 2001. (Some editions of Article XVIII § 14 misprint the deadline for implementing legislation as 1999, but this is incorrect since the measure passed in 2000, original drafts intended consideration for the 1998 election, but Colorado Secretary of State Vikki Buckley made a mistake in counting signatures.)

In the 2001 session, the legislature met the 2001 deadline, and passed legislation now codified at Colorado Revised Statutes § 18-18-406.3, which accomplishes a number of tasks including securing the confidentiality of the registry and establishing a misdemeanor criminal offense for any person, including government officials, who discloses patient, caregiver, or physician information from the confidential Medical Marijuana Registry. But in 2010, the Legislature has now missed its window of opportunity to burden this constitutional right. Any enactment is subject to challenge on this ground, and many others as well.

## General Federal Concerns

Although Senator Romer said his efforts to bring marijuana “out of the shadows” are now over, this bill attempts to bring marijuana out of the shadows. Much of HB 1284 uses a liquor licensing analogy. Alcohol Prohibition (a failed policy which lasted only thirteen years) is over; Marijuana Prohibition (a failed policy which has lasted over seventy years) is ending, but not over yet. 2010 is the wrong time to attempt to bring transparency to marijuana. Not when the U.S. Department of Justice and U.S. Drug Enforcement Administration are increasing their belligerence. Rogue DEA Agent Jeff Sweetin is quoted in the newspaper as opining, “It’s not medicine.” [http://www.denverpost.com/ci\\_14393797](http://www.denverpost.com/ci_14393797). Sweetin also threatens Colorado’s thousands of medical marijuana patients and caregivers at the point of a gun:

“We’re still going to continue to investigate and arrest people. ... Technically, every dispensary in the state is in blatant violation of federal law,” he said. “The time is coming when we go into a dispensary, we find out what their profit is, we seize the building and *we arrest everybody*. They’re violating federal law; they’re at risk of arrest and imprisonment.”

Rogue Agent Sweetin is joined by Acting U.S. Attorney for Colorado David Gaouette, who confirms the view that medical marijuana is a violation of federal laws. <http://www.9news.com/news/article.aspx?storyid=132886&catid=339> The U.S. Attorney’s Office further confirms that the federal government will continue to ignore the Colorado Constitution: “Possession or distribution *of any quantity of marijuana, for any purpose, remains illegal as a matter of federal law* throughout the State of Colorado. [Federal prosecutors have] the discretion to prosecute individual cases of possession and distribution *without regard to state law*,” wrote Assistant U.S. Attorney Stephanie Podolak in a brief filed in federal court. [http://www.denverpost.com/ci\\_14458362](http://www.denverpost.com/ci_14458362)

HB 1284’s transparency, posting requirements, unconstitutional repeal of confidentiality, and government licenses in a public database, would serve up, on a silver platter, vulnerable people to be eaten by the voracious armed and dangerous DEA monster. HB 1284, if it becomes law, would place Coloradans in harm’s way if they tried to comply with it.

And if you think the Colorado Attorney General will protect Colorado patients from the DEA, think again. Colorado’s chief law enforcement official takes the side of the federal government, his former employer, against the people and the Constitution he swore to uphold: “Through a spokesman, Colorado Attorney General John Suthers concurred with the Podolak brief, citing the argument ‘that no state law can, by its own force, create an exception to federal provisions criminalizing the possession, manufacture and the distribution of

marijuana. ... From our standpoint, there is no gray area in federal law. Marijuana is still illegal,” said Suthers’ spokesman Mike Saccone.”  
[http://www.denverpost.com/ci\\_14458362](http://www.denverpost.com/ci_14458362)

Specific comments on the bill follow:

**Page 3, Lines 3-10; Page 4, Lines 1-5:**

Creates the powerful “Medical Marijuana Licensing Authority,” consisting of one government official, namely the Executive Director of the Department of Revenue, which has many powers including issuing subpoenas and administering oaths. Placing this much power in the hands of a single government bureaucrat is unwise. Our system is based on checks and balances. This section also empowers this single bureaucrat unfettered discretion to hire an army of agents. In these times where our state government is literally bankrupt, we cannot afford to create an additional expensive and unnecessary layer of bureaucracy.

**Page 3, Lines 18-23; Page 8, Lines 11-21:**

Creates a multilayered bureaucracy and gives local governments a veto over whether a medical marijuana center may exist, by providing that no state license can be issued without first obtaining local approval. Many local governments in Colorado have already demonstrated hostility to suffering patients and their needs. Local governments, with a few exceptions, have generally shown by their own arrogant and illegal actions (see Frasher v. City of Centennial, Arapahoe District Court 2009, which I litigated, successfully striking down an illegal local prohibition on medical marijuana) that they cannot be trusted to exercise any reasonable discretion on this issue. Of course locals should retain neutral zoning power as to location of businesses, but nothing more. Giving these local bureaucracies any more power is an invitation to them to continue to discriminate against suffering patients, and will continue the confusing patchwork of inconsistent local regulations throughout the State. Instead, the Legislature should expressly pre-empt all of the local regulations with a uniform and fair set of standards.

**Page 4, Lines 20-23:**

Requires the State of Colorado to request the federal Drug Enforcement Administration to consider rescheduling marijuana from a Schedule I controlled substance to a Schedule II controlled substance. First, DEA does not set the schedules; rescheduling would need to be accomplished by Congress since the schedules are enshrined in the U.S. Code. See 21 U.S.C. § 812. Second, the Colorado has its own scheduling scheme for controlled substances independent of the federal designations, and the Colorado Revised Statutes itself currently lists tetrahydrocannabinols (THC, the active ingredient in marijuana, but not marijuana itself) as a Schedule I substance, i.e., one that lacks any medically-accepted use.

See C.R.S. § 18-18-203(2)(c)(XXIII). This designation makes no sense in light of the Colorado Constitution, Article XVIII § 14, which establishes the medically-accepted use. So before the Colorado Assembly tilts against windmills with the federal government, it should keep its own house in order and reschedule THC away from Schedule I in the Colorado Revised Statutes.

**Page 5, Lines 21-22:**

Empowers State to establish practices to avoid an “undue” increase in the consumption of medical marijuana. The State should not practice medicine. The State has no knowledge of the particular medical needs of each patient. The State is never in the position to discern what is a so-called “undue” increase in consumption and should not be empowered to micromanage a patient’s medication. The patient, caregiver, and physician know best on amounts medically necessary, and the constitution allows a patient to use whatever amount is medically necessary. Article XVIII § 14(4).

**Page 6, Lines 11-12; Page 14, Lines 7-15:**

Empowers the State to determine “what constitutes good moral character,” allowing the government, with all of its moral wisdom, to deny the right to be a caregiver to anyone that does not satisfy the moral judgment of the State. Like much of HB 1284, this grants far too much discretionary power to the State. Interestingly, there is no “good moral character” requirement for Members of the Legislature.

**Page 6, Lines 13-15; Page 22, Lines 14-18:**

Creates the Medical Marijuana Fashion Police, allowing the State to determine the “size, dimensions, and *acceptable colors* for a medical marijuana center sign...”. It also prohibits the use of a logo, any form of branding, or depictions of the marijuana plant. I have previously stated that the community would accept some reasonable regulation of signage as a compromise position in exchange for concessions in other areas, and still believe this in theory, but at this point the totality of HB 1284 is far from reasonable. HB 1284 in its present form would be a crushing death blow to many patients in Colorado.

**Page 6, Lines 25-27:**

This section provides that a person cannot refuse, even under the right to remain silent against self-incrimination, to provide testimony to the medical marijuana licensing authority. The Colorado State Legislature cannot repeal the Fifth Amendment to the United States Constitution. The immunity section does not cure the constitutional violation as the State Legislature cannot immunize a person against federal prosecution, and we have seen a newly aggressive federal government in the past weeks, with a rogue DEA agent even telling the Denver

Post that “this is not medicine. ... Every dispensary is in violation of federal law. ... the day is coming when we arrest everybody,” presumably even Colorado Department of Health officials or legislators for aiding and abetting this putative federal violation. Additionally, the immunity is only conferred on the testifying witness, so the information could be used against another defendant as well.

**Page 8, Lines 22-27; Page 9, Lines 1-18:**

This requires any growing location to post a sign on the planned medical marijuana location visible to all in the neighborhood, including children. This is a dangerous and open invitation for criminals to break in and steal the marijuana they think might be inside, and get shot or killed in the process. Medical marijuana locations should be discreet, especially now that the DEA proclaims it will “arrest everybody” associated with it. Any alternative rule harms children and infringes on public peace and safety. This requirement would drive medical marijuana back underground, all for the profit of criminal drug cartels, a development the evil DEA would welcome to justify its own increasingly-irrelevant existence.

**Page 11, Lines 18-20; Page 13, Lines 10-15:**

Allows the locals and the State veto power based on the availability of medical marijuana outlets already existing. This anti-competitive provision confers a monopoly on the existing outlets, which harms patients and drives up costs. It removes incentives for good patient service if the existing outlets are guaranteed exclusion from competition. Shutting the door to new entrepreneurs, who might do a better job at a lower cost to patients, is un-American.

**Page 12, Lines 11-19:**

Forces an applicant to have a building “ready for occupancy with the furniture, fixtures, and equipment in place” before the application is even approved. This would place a major burden on new entries to spend money that might be wasted if the application is rejected for the hundreds of discretionary, pretextual reasons the bill allows.

**Page 13, Lines 7-9:**

Allows the government to deny a license if “the character of the applicant is such that violations of this article would be likely to result of a license were granted.” The government can penalize and reject people for potential, imagined, future violations. Such Orwellian “future-punishment” does not belong in America.

**Page 14, Lines 18-19:**

This prohibits a peace officer, or any member of a peace officer's family, from obtaining a license. Most police officers and their families are upstanding members of our community, and they should not be discriminated against.

**Page 14, Lines 20-22:**

This would prohibit any person with an unpaid parking ticket from operating a medical marijuana center. I can sometimes understand government's burning desire to regulate and insert itself into every area of our lives, but why must medical marijuana providers meet a higher standard than any other business owner in Colorado? This section reveals the true purpose of this bill: to destroy the legitimate medical marijuana industry, and drive it back underground so DEA agents and prosecutors can have full employment.

**Page 14, Lines 24-26:**

Prohibits a person convicted of any felony or a drug-related misdemeanor from involvement in the medical marijuana business. This would shut out many qualified people and further restrict competition and drive up costs. It is unconstitutional, as Article XVIII § 14 already defines caregiver and contains no such restriction.

**Page 16, Lines 12-17:**

Prohibits a center from being located within 1000 feet of a school, preschool, or day care center. The State Legislature is not a local zoning board. This is an irrational limitation. Children are not accessing dispensaries. They can walk. 1000 feet accomplishes nothing other than to add another arbitrary limitation.

**Page 20, Lines 10-12:**

Allows locals to limit arbitrarily the amount of centers. The City of Centennial and other cities' hatred of medical marijuana demonstrates that locals generally cannot be trusted to exercise any discretion in this area.

**Page 21, Lines 9-12:**

Makes medical marijuana non-profit, and consequently non-taxable. When did profit become evil in America? It is a bad idea for the State of Colorado to walk away from millions in tax revenue. Many people invest much time and effort in this business and there is nothing wrong with making a profit when a person works hard and takes a risk.

**Page 21, Lines 13-16:**

Restricts hours of operation. The State Legislature is not a local zoning board.

**Page 21, Lines 17-24:**

Restricts numbers of plants and ounces that may be possessed, currently restricted to whatever amount is medically necessary. This proposal is unconstitutional, because the constitution allows whatever amount is medically necessary. Why does the government care how much marijuana is possessed? This is confidential medical information.

**Page 28-35:**

Attempts to resurrect the provisions of SB 109 dealing with the physician-patient relationship, including those provisions already amended out by the legislature.

**Page 35, Lines 20-26:**

Prohibits the practice of delegating authority of primary caregiver duties to another primary caregiver, or people cooperating together, widely acceptable practices that deliver medicine to patients at lower cost. These restrictions are unconstitutional.

**Page 36, Lines 6-8:**

Requires caregivers to snitch on their disabled and vulnerable patients to law enforcement, upon demand.

**Page 36, Lines 22-25:**

Enacts the five patient limit per caregiver, originally the DEA's idea, rejected by the Colorado Board of Health after an all-day hearing that actually considered the needs of real patients. Blatantly unconstitutional.

**Page 37, Lines 3-4:**

Restricts a patient to one caregiver at any given time. This restriction is also unconstitutional. Patients must be afforded the ability to use many caregivers at any given time, as is common legal practice now. A patient with a prescription for oxycontin may choose any pharmacy, and there is no reason a medical marijuana patient should not have the same flexibility.

**Page 38, Lines 18-27:**

Requires patients to carry their papers at all times. The state-issued registry card is optional under the Constitution, so this provision is also unconstitutional.

**Page 40, Lines 25-27:**

Flatly prohibits a person on probation or parole from possessing or using medical marijuana. This is a violation of the U.S. Constitution's Eighth Amendment prohibition on cruel and unusual punishment, which will cause suffering.

**Page 41, Lines 16-23:**

Requires a criminally accused to bring forth certification from a physician about the medical necessity of any amount in excess of two ounces. Shifts the burden of proof beyond a reasonable doubt from the prosecution to the defendant. Currently a defendant is innocent until proven guilty. This would provide that a defendant is guilty until he proves he is innocent.

**Page 43, Lines 14-24:**

Places a moratorium statewide on opening of new centers, and locks in existing centers so that they need not obtain a license for one year. Existing players probably welcome this government-protection racket of their revenue stream, but this would freeze the industry in time, prevent new innovation, restrict freedom and open competition, and scare off new entrepreneurs who want to do this business responsibly and have good ideas of how to serve patients better and at lower cost. An artificial moratorium would only increase profits for the existing players to the detriment of patients, who still pay too much for their medicine.

Thank you for considering these comments. Please call me at 303-634-2244 with any questions.

Sincerely,

Robert J. Corry, Jr.

cc: Members, Colorado Legislature