

# New Jersey Senate

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April 21, 2022

Acting Attorney General Matthew Platkin  
New Jersey Office of the Attorney General  
Department of Law and Public Safety  
P.O. Box 080  
Trenton, New Jersey 08625-0080

Dear Acting Attorney General Platkin,

On April 13, 2022, a memorandum was issued by your office to all law enforcement chief executives in the State regarding compliance with the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), P.L.2021, c.16. We write to you now to express our deep concern with the advice provided in the memorandum and to ask that you help to mitigate some of the harm it will undoubtedly cause.

In the memorandum, you advise that law enforcement agencies may take no adverse action against any law enforcement officer who tests positive for marijuana after undergoing a drug test, unless the positive drug test is accompanied by a physical examination conducted by a Drug Recognition Expert (DRE) or similarly trained professional who determines that the officer is intoxicated.

However, the memorandum fails to mention that marijuana users are federally prohibited from purchasing or possessing firearms, an omission that may put officers unknowingly at risk of criminal prosecution, or that the legitimacy of DRE evidence is currently being questioned by the New Jersey Supreme Court. Moreover, federal grant money is routinely conditioned on compliance with federal law. In recognition of this, Section 53 of CREAMMA spells out the circumstances under which the law would not apply, including if compliance with CREAMMA would jeopardize a federal contract or the receipt of federal funds. Yet, there is no indication that these limitations have been taken into account.

Though we strongly question the wisdom of encouraging officers to use marijuana while off-duty, we are most troubled by the inevitable consequences of this policy for municipal and county governments, which go beyond the potential loss of federal contracts or funding. As you well know, employers, including those that are public entities, are regularly named as defendants in lawsuits arising from the individual actions of employees. By tying the hands of law enforcement agencies with regard to enforcing meaningful drug-free-workplace policies, those agencies will be at greater risk of liability for the actions of officers who test positive for marijuana following

any incident involving the death or injury of a member of the public or any other person. Even when such claims are dismissed for lack of merit, they may be extremely costly. Unfortunately, it is the taxpayers who ultimately bear the brunt of those costs.

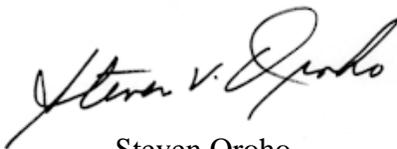
We are encouraged to hear that similar concerns have been raised by some of our colleagues across the aisle and hold out hope for a legislative solution. In the meantime, we implore you to take any action within your power to provide relief from liability to local law enforcement agencies with respect to the actions of officers who test positive for marijuana, but against whom no adverse employment action may be taken.

Thank you for taking the time to consider our request. We look forward to further discussions with you on this matter.

Sincerely,

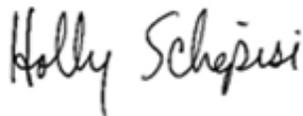


Robert Singer  
Deputy Leader

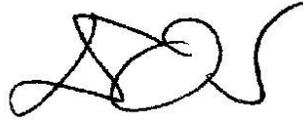


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