

February 27, 2012

Dear Senator:

We, the undersigned, are writing to urge you to oppose legislative proposals (S. 605, S. 409, and S. 839) pending in the Senate that would expand the application of Schedule I penalties to any quantity of more than three dozen synthetic substances and subject individuals to harsh and unnecessary prison terms that our country can ill afford. Passage of these proposals could also jeopardize promising scientific and medical research. We commend Sen. Rand Paul (R-KY) for putting a hold on these costly and misguided legislative proposals.

When similar legislation (H.R. 1254) made its way through the U.S. House of Representatives late last year, numerous members raised strong concerns about hastily adding synthetic substances to Schedule I and subjecting individuals to severe federal penalties including mandatory minimum sentences. Several members of the House Committee on the Judiciary, including Ranking Member John Conyers (D-MI), requested a hearing to address a number of concerns. After this request was denied, the House Judiciary Committee engaged in a four hour long debate during markup of the bill and nearly a dozen amendments were offered to address concerns.

We oppose the legislative proposals pending in the Senate because they would expand the application of existing Schedule I penalties and mandatory minimum sentences to include synthetic substances. During floor consideration of H.R. 1254, Rep. Henry Waxman (D-CA) stated "I do not support the mandatory minimum sentencing provisions of the Controlled Substances Act for Schedule I drugs, provisions that under this legislation will apply to the listed synthetic drugs as they apply to all Schedule I drugs." Schedule I of the Controlled Substances Act authorizes federal prosecutors to seek up to 20 years' imprisonment for individuals convicted of distribution, possession with intent to distribute, importation or manufacturing of *any quantity* of a synthetic substance, and requires a mandatory minimum sentence of 20 years to life imprisonment for individuals engaged in this activity and charged with certain aggravating circumstances. As Rep. Waxman noted, "mandatory minimum sentencing inappropriately applies a one size fits all approach, eliminating the ability of judges to exercise discretion in determining an appropriate sentence in light of individual circumstances."

Numerous concerns have also been raised by members of Congress about the potentially damaging consequences that passage of these legislative proposals could have for scientific and medical research. Because these proposals would place synthetic substances under Schedule I, potential therapeutic, scientific and industrial uses for these synthetic substances may remain undiscovered. Researchers who want to study synthetic substances would be subject to excessive bureaucratic red tape and procedural hurdles that could have a chilling effect on research. During floor consideration of H.R. 1254 last December, Rep. Bobby Scott (D-VA) noted that "the (House) Judiciary Committee ... received numerous statements from pharmaceutical and medical researchers imploring us not to hamper their ability to determine possible medical uses of these substances by placing them on Schedule I." Rep. Dana Rohrabacher (R-CA) shared, in a Dear Colleague letter opposing H.R. 1254, several statements he received from scientists including one from Professor Scott Rychnovsky, the Chair of Chemistry at the University of California, Irvine, who stated that "classifying a broad list of chemicals as Schedule I would be an outright disaster for biomedical research!" Rep. Rohrabacher urged his colleagues to consider that "if we are to maintain our position in the world as the leader in the research and development of pharmaceuticals, we must refrain from

prescribing such stubborn, heavy-handed solutions to our problems and be open to the objections from legitimate researchers.” Rep. Zoe Lofgren (D-CA) expressed identical concerns in her Dear Colleague letter and floor remarks.

Allowing these legislative proposals to clear the Senate would also bypass formal scheduling procedures that are intended to schedule a drug on the basis of science rather than hearsay. During House consideration of H.R. 1254, some members opposed this legislation because it relieved the Attorney General and HHS of its congressionally mandated responsibility to conduct a medical and scientific evaluation of each substance that will be scheduled. For example, Rep. Chris Van Hollen (D-MD) opposed H.R. 1254 in part because it “short-circuits [the scheduling] process and substitutes the less-informed judgment of Congress for the more considered view of scientists and experts.” Other members have pointed out that the Drug Enforcement Administration has the authority to emergency schedule substances for a period of time, but has failed to utilize this process for all but eight of more than forty substances listed in these legislative proposals.

Members of Congress have also drawn parallels between the effort to rush passage of these legislative proposals to the passage of the crack and powder cocaine sentencing disparity more than twenty years ago. In a Dear Colleague letter written by Rep. Bobby Scott (D-VA), and signed by eight Members of Congress including Rep. Ron Paul (R-TX) and Rep. John Conyers (D-MI), Rep. Scott cautioned, “We saw from the crack cocaine debate over the past 20 years, as well as the continuing debate over the efficacy of current federal drug policy, what happens when we act politically with a one-size-fits-all federal crime policy without allowing science or evidence to inform our actions.” Drug policy should be grounded in the latest available scientific evidence, not steered by high profile anecdotal reports.

We believe, as does Sen. Paul, that federal intervention on this issue is unwarranted since more than forty states have already enacted legislation criminalizing synthetic drugs. Moreover, these bills will increase federal law enforcement and criminal justice costs at a time when Congress is focused on lowering government spending.

This legislation might also subject more young people to a criminal record and lengthy sentences served in federal prison facilities. Young people would be better served by a proactive effort by Congress to fund studies and evaluations that give the public, lawmakers and health authorities a better understanding of the health implications of synthetic drugs. The government should also be doing what it can to help parents and community mentors educate young people about synthetic drugs.

Congress should also reduce the availability of these products to young people through market regulation. For instance, the misuse of household and industrial aerosol products by young people resulted in a government response that balanced public education with efforts by merchants and lawmakers to prevent young people from purchasing or acquiring aerosol products.

When the House version of these legislative proposals reached the floor of the U.S. House of Representatives, 98 members, including sixteen Republicans, opposed H.R. 1254. We urge you to oppose S. 605, S. 409, S. 839 and H.R. 1254 should they come up for a vote in the Senate.

Most Sincerely,

American Civil Liberties Union

Drug Policy Alliance

NAACP

National Association of Criminal Defense Lawyers

The Sentencing Project

StoptheDrugWar.org

Students for Sensible Drug Policy

United Methodist Church, General Board of Church and Society