

# 2024 MDDA SB 399 Advertising.pdf

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## **Senate Bill 399: Cannabis—Advertising—Prohibited Locations**

On behalf of the Maryland Dispensary Association (MDDA)  
Senate Finance Committee

### **Support**

March 7, 2024

The Maryland Dispensary Association (MDDA), formerly the Maryland Medical Dispensary Association (MDMDA), was established in May, 2017 in order to promote the common interests and goals of the Medical Cannabis Dispensaries in Maryland. MDDA advocates for laws, regulations and public policies that foster a healthy, professional and secure medical cannabis industry in the State. MDDA works on the State and local level to advance the interest of licensed dispensaries as well as to provide a forum for the exchange of information in the Medical Cannabis Industry.

Senate Bill 399 is a simple and straightforward bill. It simply restores some advertising provisions that were in place for cannabis licensees during the Maryland Medical Cannabis program. Allowing more flexibility with regard to signs, including billboards, coupled with the restrictions already in place about what can and cannot be included in advertisements balance responsible advertising with the need for licensees to market and advertise their business. This will be especially important as the social equity licensees enter the market.

For this reason, we urge a favorable vote on Senate Bill 399.

# **Final Testimony SB 399.pdf**

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Position: UNF

**Written Testimony in Opposition to Senate Bill 399**

Cannabis - Advertising - Prohibited Locations  
*Before the Finance Committee: March 7th, 2024*

Senate Bill 399 repeals Maryland’s prohibition on outdoor cannabis advertising and replaces it with a less protective law. SB 399 unnecessarily risks the health of Maryland's children by allowing outdoor cannabis advertising as long as it is five hundred feet or more from substance use treatment facilities, schools, child-care facilities, playgrounds, libraries, and public parks.

Senate Bill 399 must be rejected because (1) Maryland’s prohibition against outdoor cannabis advertising protects Maryland children from exposure to cannabis that results in adverse public health consequences; and (2) Maryland’s restriction against outdoor cannabis advertising complies with the commercial speech doctrine of the First Amendment. Because the existing regulatory framework of prohibiting outdoor cannabis advertising is in the best interest of public health, specifically related to Maryland children, and is constitutionally valid, we oppose SB 399 and urge an unfavorable report.

**Exposure to Outdoor Cannabis Advertising Has Significant Public Health Ramifications  
for Children**

Maryland’s prohibition against outdoor cannabis advertising protects Maryland children from unnecessary exposure to cannabis that results in adverse public health consequences. Research shows that children exposed to cannabis advertising are significantly more likely to use cannabis and have more positive perceptions about the drug.<sup>1</sup> Increased usage of cannabis during adolescence is linked to negative outcomes, such as academic unpreparedness and poor academic performance, increased delinquency, poor mental health, impaired cognitive development, development of psychosis, anxiety, depression, impaired cardiovascular health and heightened

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<sup>1</sup> Elizabeth J. D’Amico et al., *Gateway to Curiosity: Medical Marijuana Ads and Intention to Use During Middle School*, 29 PSYCH. ADD. BEHAV. 613 (2015); Elizabeth J. D’Amico et al., *Planting the Seed for Marijuana Use: Changes in Exposure to Medical Marijuana Advertising and Subsequent Adolescent Marijuana Use, Cognitions, and Consequences Over Seven Years*, 188 DRUG & ALCOHOL DEPEND. 385 (2018).

risk of cardiac arrest, higher risk of abuse or dependence in adulthood, obesity, and impaired immune system and cell function.<sup>2</sup> As a public health matter, cannabis use during adolescence results in more significant negative consequences than alcohol use.<sup>3</sup>

Cannabis outdoor advertising plays a substantial role in the problem because physical advertisements, such as billboards, have a much stronger effect on teens than other forms of advertising. For example, one study found that children frequently exposed to cannabis billboard advertising were seven times more likely to use cannabis and nearly six times as likely to have symptoms of cannabis use disorder.<sup>4</sup> Children exposed to cannabis advertisements are also more likely to miss school, have trouble concentrating, do something they regret, or get into trouble at school or home. Therefore, outdoor cannabis advertising has a profound effect on an adolescent's decision to use cannabis and related consequences.

Outdoor advertising for cannabis is even more dangerous for adolescents than outdoor advertising for other vices such as tobacco and alcohol. Advertising for cannabis is particularly problematic for two reasons: first, children hold positive perceptions of cannabis as a result of cannabis-positive messages conveyed through advertising and social media. For example, more than fifty percent of high schoolers believe that smoking marijuana regularly does not carry great risk. Twenty percent of teens report driving under the influence of cannabis, and of this, over thirty percent believe their driving ability was improved due to cannabis use. Second, the marketing methods of cannabis advertise the drug as a safe, natural, medicinal product, luring children into a false sense of security when deciding to use cannabis.<sup>5</sup> Compared to tobacco and alcohol, teens' positive perceptions of cannabis and cannabis marketing tactics render children

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<sup>2</sup> *Marijuana and Youth: The Impact of Marijuana Use on Teen Health and Wellbeing*, CTR. FOR DISEASE CONTROL & PREVENTION (Apr. 28, 2023) <https://www.cdc.gov/marijuana/featured-topics/marijuana-youth.html>; Sanjay B. Maggirwar et al., *The Link Between Cannabis Use, Immune System, and Viral Infections*, 13 *VIRUSES* 1099 (2021); Venkat N. Subramaniam, *The Cardiovascular Effects of Marijuana: Are the Potential Adverse Effects Worth the High?*, 116 *MO. MED* 146 (2019); Ryan S. Sultan et al., *Nondisordered Cannabis Use Among US Adolescents*, 6 *JAMA NETWORK OPEN* 1 (2023); Will Lawn, *The CannTeen Study: Cannabis Use Disorder, Depression, Anxiety, and Psychotic-like Symptoms in Adolescent and Adult Cannabis Users and Age-matched Controls*, 36 *J. PSYCHOPHARMACOL* 1350 (2022).

<sup>3</sup> Elizabeth J. D'Amico et al., *Understanding Rates of Marijuana Use and Consequences Among Adolescents in a Changing Legal Landscape*, *CURRENT ADD. REPS.* 343 (2017).

<sup>4</sup> Pamela J. Trangenstein et al., *Cannabis Marketing and Problematic Cannabis Use Among Adolescents*, 82 *J. Stud. Alcohol & Drugs* 288 (2021).

<sup>5</sup> *How Marijuana Ads Affect Youth: Q&A with Elizabeth D'Amico*, RAND (Aug. 21, 2018)

<https://www.rand.org/pubs/commentary/2018/08/how-marijuana-ads-affect-youth-qa-with-elizabeth-damico.html>.

even more susceptible to using cannabis after viewing cannabis advertisements such as billboards.

There is a reason why last session’s Cannabis Reform Bill prohibited cannabis businesses from utilizing outdoor advertising—legislators did not want cannabis businesses to be able to “directly or indirectly target individuals younger than age 21.”<sup>6</sup> The proposed 500-foot exclusionary zone in SB 399 is too lenient, does not adequately prevent cannabis businesses from marketing to children, and flouts the Cannabis Reform Act’s goal. First, the list of protected locations is underinclusive and leaves out many areas frequented by Maryland’s children, including museums, places of worship, and sporting facilities. Second, 500 feet is an insufficient buffer zone that does not adequately protect youth from exposure to cannabis billboards. It is difficult to believe that students would not be regularly exposed to a cannabis billboard 500 feet from their middle school. Because SB 399 would unnecessarily expose children to cannabis advertising near places frequented by youth, maintaining the current ban on outdoor advertising is essential.

Moreover, Maryland is one of many states that prohibits outdoor cannabis advertising. In addition to Maryland, twelve other states prohibit outdoor advertising.<sup>7</sup> For example, Virginia, New York, and Delaware prohibit billboard advertising of cannabis products and businesses.<sup>8</sup> Similarly, Minnesota’s statute prohibits outdoor advertising of any kind.<sup>9</sup> Going further than Maryland are states like Hawaii and Mississippi, which prohibit all forms of cannabis advertising.<sup>10</sup> Based on this legal landscape, Maryland’s complete prohibition against outdoor advertising of cannabis is not unique.

Therefore, Maryland must continue to ban the form of advertising that has the most significant impact on an adolescent’s decision to use cannabis—outdoor advertising. As such, SB 399 must be rejected.

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<sup>6</sup> 2023 Md. Laws Ch. 254.

<sup>7</sup> 18 VA. ADMIN. CODE § 110-60-215; N.Y. CANNABIS LAW § 86; MINN. STAT. § 342.64; NEW ENG HAW. CODE R. §§ 11-850-141, 145; DEL. CODE ANN. tit 16. § 4914A; ALA. ADMIN. CODE r. 538-X-4.17; FLA. STAT. ANN. § 381.986; 15 MISS. CODE R. § 22-3-1-2.2.1; MONT. ADMIN. R. 42.39.123; UTAH CODE ANN. § 4-41a-403; S.D. ADMIN. R. 44:90:10:14.01; OHIO ADMIN. CODE 3796:5-7-01.

<sup>8</sup> 18 VA. ADMIN. CODE § 110-60-215; N.Y. CANNABIS LAW § 86; DEL. CODE ANN. tit 16. § 4914A.

<sup>9</sup> MINN. STAT. § 342.64.

<sup>10</sup> HAW. CODE R. §§ 11-850-141, 145; 15 MISS. CODE R. § 22-3-1-2.2.1.

## **Maryland’s Restriction on Cannabis Advertising Is Not a Violation of the First Amendment**

Maryland is acting within its constitutional authority to regulate commercial speech by prohibiting outdoor cannabis advertising. This conclusion was reached the Maryland Attorney General when reviewing the advertising restriction of the Cannabis Reform Act last year. While the First Amendment protects commercial speech—any speech or writing which aims to promote commerce—it also permits states to enact restrictions that protect public welfare. In *Central Hudson*,<sup>11</sup> the Supreme Court created a four-part test to determine whether a restriction on commercial speech is constitutional: (1) the speech being restricted concerns lawful activity and is not misleading; (2) the asserted governmental interest is substantial; (3) the regulation directly advances that governmental interest; and (4) the regulation is not more extensive than necessary to serve the governmental interest. Our current regulatory framework survives this test because cannabis advertising is not a lawful activity under federal law, Maryland has a substantial interest in keeping cannabis out of the hands of individuals under twenty-one, and the current restrictions not only advance the state's interest, but are also narrowly tailored.

For one, cannabis activity cannot be considered “lawful activity” where its use, possession, production, and distribution remains illegal under federal criminal law.<sup>12</sup> The Supremacy Clause of the U.S. Constitution dictates that federal law governs the “lawful activity” analysis. Thus, an activity that is not permitted by federal law—even if permitted by state law—is not a “lawful activity” within the meaning of *Central Hudson's* first factor. As such, outdoor advertising by cannabis businesses is not entitled to protection under the First Amendment.

If a Court were to determine that cannabis advertising is a “lawful activity,” Maryland’s restriction on outdoor advertising is still legal because it complies with the three remaining factors of the *Central Hudson* test.

First, Courts have established that states have a substantial interest in protecting the physical, mental and emotional health of children.<sup>13</sup> As discussed above, cannabis exposure poses a significant risk to this interest, given the adolescent brain is still undergoing crucial

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<sup>11</sup> *Central Hudson Gas & Elec. v. Public Serv. Comm’n*, 447 U.S. 557 (1980).

<sup>12</sup> *Mont. Cannabis Indus. Ass’n v. State*, 368 P.3d 1131 (Mont. 2016); *Cocroft v. Graham*, No. 23-cv-00431 (N.D. Miss. Jan. 22, 2024)

<sup>13</sup> *Seattle Events v. State*, 512 P.3d 926 (Wash. App. 2022); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001); *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 (4th Cir. 1996).

cognitive and neurological development. It is Maryland's duty and right to protect its substantial interest by minimizing children's exposure to cannabis advertisements.

Second, Maryland's prohibition against outdoor cannabis advertising prohibits a handful of cannabis advertising methods that have been found to cause increased harm to youths. For instance, children exposed to billboard advertisements face a much greater risk of frequent cannabis use and cannabis use disorder. By prohibiting outdoor cannabis advertising, adolescents' exposure to cannabis-related advertising will decrease significantly, which may in turn diminish teen cannabis usage—this was the case with other regulated products like alcohol and tobacco. Thus, Maryland's current restrictions are directly advancing its substantial interest in preventing underage cannabis consumption.

Third, Maryland's prohibition is narrowly tailored because the outdoor advertising restriction still leaves ample opportunities for licensed cannabis businesses to market their products to those who are of legal age (i.e. social media, print, website, etc.). The current restriction does not create an outright ban on cannabis advertising, but instead merely bans a handful of advertising methods that have been proven to negatively impact the health of children. The absence of outdoor cannabis advertising hasn't detrimentally impacted the industry. Maryland's legal cannabis sales totaled approximately \$800 million in 2023, underscoring the industry's success without the use of outdoor advertising. In 2024, the industry in Maryland is projected to reach \$1.4 billion in sales.<sup>14</sup> The only reason to repeal the outdoor advertising ban is to attain more sales for an already profitable cannabis sector to the detriment of Maryland children.

Further, a complete prohibition is necessary because children are inherently transient; restricting outdoor advertisements solely around child-centered facilities would prove ineffective in preventing their exposure to such marketing, as adolescents' mobility extends beyond these areas. As a result, it is practically impossible for parents to control their child's exposure to outdoor cannabis advertising. As such, Maryland's restriction is narrowly tailored to achieve the desired objective of preventing underage cannabis consumption.

As the Maryland Attorney General determined regarding the outdoor advertising restriction in Cannabis Reform Act: Maryland's cannabis advertising restrictions are not

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<sup>14</sup> *MCA Medical and Adult-Use Cannabis Data Dashboard*, MD. CANNABIS ADMIN. (last updated Jan. 8, 2024) <https://mmcc.maryland.gov/Pages/Data-Dashboard.aspx>.



unconstitutional.<sup>15</sup> The outdoor cannabis advertising restrictions do not infringe upon the core principles of free expression but rather strike a delicate balance between individual liberties and the substantial governmental interest in children’s health. We urge an unfavorable report on SB 399.

### **Conclusion**

The limitations on outdoor cannabis advertising play a crucial role in shaping a responsible and informed cannabis market, mitigating the normalization of cannabis use, and reducing the inadvertent exposure of minors to potentially influential messages. Repealing the current prohibition under SB 399 would undermine these critical safeguards and compromise public health goals. Ultimately, the advertising restrictions on cannabis contribute to a healthier and more responsible cannabis industry, ensuring that the right to commercial speech is exercised in harmony with the paramount interest of protecting the well-being of the public, particularly the youth. For these reasons, we request an unfavorable report on Senate Bill 399.

*This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law or the University of Maryland system.*

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<sup>15</sup> RE: House Bill 556 and Senate Bill 516, “Cannabis Reform,” OFFICE OF COUNCIL TO THE GENERAL ASSEMBLY, [https://mgaleg.maryland.gov/2023RS/ag\\_letters/hb0556.pdf](https://mgaleg.maryland.gov/2023RS/ag_letters/hb0556.pdf).

**MDDCSAM SB399 cannabis ads.pdf**

Uploaded by: Joseph Adams, MD

Position: UNF



*MDDCSAM is the Maryland state chapter of the American Society of Addiction Medicine whose members are physicians and other health providers who treat people with substance use disorders.*

## **SB 399 - Cannabis - Advertising - Prohibited Locations**

Senate Finance Committee, March 7, 2024

### **OPPOSED**

We are writing on behalf of the Maryland-DC Society of Addiction Medicine (MDDCSAM) to oppose Senate Bill 399, which repeals the current ban on all outdoor cannabis advertising and billboards and replaces it with a 500-foot exclusionary zone for cannabis advertising around substance use disorder treatment facilities and child- and youth-oriented locations such as schools, childcare centers, playgrounds, libraries, and public parks.

MDDCSAM opposes SB 399 because it increases risk for Maryland's children and youth, ignores scientific evidence of the public health harms from outdoor cannabis advertising, and is unnecessary to maintain the current economic success of Maryland's commercial cannabis industry.

Research shows that exposure to cannabis advertising, including billboards, among adolescents is associated with significantly increased cannabis use and development of cannabis use disorder.<sup>1</sup> The greater the exposure to cannabis billboards, the greater the frequency of cannabis use and development of cannabis use disorder.<sup>2</sup> Even adolescents who saw cannabis billboards only rarely or sometimes had a three-fold increase. The 500-foot exclusionary zone proposed in SB399 has no scientific support of which we are aware. In addition, the proposed exclusionary zone does not apply to other locations frequented by children and adolescents, such as museums, gyms, professional sports venues, and houses of worship. Thus, SB399 would essentially reverse the important public health safeguard established by the Maryland General Assembly when it banned all outdoor cannabis advertising. This goes against the scientific evidence cited above, which has contributed to several other states (AL, DE, FL, HI, MN, MT, NY, SD, and UT) completely banning billboards for cannabis advertising.<sup>3</sup>

The Maryland commercial cannabis industry has been very successful financially in the absence of outdoor cannabis advertising. Maryland's legal cannabis sales totaled approximately \$800 million in 2023 and are estimated to exceed \$1 billion in 2024.<sup>4</sup> Billboard advertising is clearly not essential to the financial health of the Maryland cannabis industry.

In summary, MDDCSAM opposes SB399 because repeal of the current ban on outdoor cannabis advertising (billboards) removes an important public health safeguard for children and youth and is unnecessary for the financial health of the cannabis industry.

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(continued . . .)

## References

- <sup>1</sup> D'Amico EJ et al. *Planting the Seed for Marijuana Use: Changes in Exposure to Medical Marijuana Advertising and Subsequent Adolescent Marijuana Use, Cognitions, and Consequences Over Seven Years*, *Drug and Alcohol Dependence*, Vol. 188, pages 385-391 (2018).
- <sup>2</sup> Trangenstein PJ et al. *Cannabis Marketing and Problematic Cannabis Use Among Adolescents*, *Journal of Studies on Alcohol and Drugs*, Vol. 82, pages 288-296 (2021).
- <sup>3</sup> ALA. ADMIN. CODE R. 538-X-4.17; DEL. CODE ANN. TIT. 16, § 4919A; FLA. STAT. ANN. § 381.986; HAW. CODE R. § 11-850-145; MINN. STAT. § 342.64; MONT. ADMIN. R. 42.39.123; N.Y. CANNABIS LAW § 86; S.D. ADMIN. R. 44:90:10:14.01; and UTAH ADMIN. CODE R. 4-41a-403.
- <sup>4</sup> *MCA Medical and Adult-Use Cannabis Data Dashboard*, Maryland Cannabis Administration, available at <https://mmcc.maryland.gov/Pages/Data-Dashboard.aspx>.

**ACSCAN\_UNF\_SB399.pdf**

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Position: UNF



# Memorandum In Opposition to SB 399

## Senator West

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Senate Finance Committee

March 7, 2024

American Cancer Society Cancer Action Network is the nonprofit nonpartisan advocacy affiliate of the American Cancer Society. ACS CAN empowers cancer patients, survivors, their families and other experts on the disease, amplifying their voices and public policy matters that are relevant to the cancer community at all levels of government. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. On behalf of our constituents, many of whom have been personally affected by cancer, we are opposing the passage of SB 399.

ACS CAN believes that the broader language found in current law – prohibiting advertising on the side of buildings, publicly visible locations, billboards or signboards – is stronger than what is proposed in SB 399. In addition, given many cannabis retailers sell e-cigarettes and other electronic smoking devices, SB 399 may inadvertently encourage the use of billboards, signboards, et cetera to promote the use of electronic smoking devices.

For these reasons, ACS CAN thanks the Chair and committee for the opportunity to testify and respectfully urges unfavorable consideration of SB 399.

# **SB 399 Written Testimony-Swinburne.pdf**

Uploaded by: Mathew Swinburne

Position: UNF

## **Written Testimony in Opposition to Senate Bill 399**

### **Cannabis - Advertising - Prohibited Locations *Before the Finance Committee: March 7th, 2024***

Maryland currently restricts outdoor cannabis advertising by prohibiting advertisements on the side of buildings or other publicly visible locations. However, advertisements are permitted on the property of a cannabis business. Senate Bill 399 repeals these restrictions and replaces them with a 500-foot advertising exclusionary zone around substance use treatment facilities, schools, child-care facilities, playgrounds, libraries, and public parks. This change in policy would unnecessarily place Maryland's children at risk. Research shows that children frequently exposed to cannabis billboards are seven times more likely to use cannabis and nearly six times as likely to have symptoms of cannabis use disorder.<sup>1</sup> The system proposed by Senate Bill 399 does little to prevent children from being exposed to cannabis advertising. First, the 500-foot exclusionary zone provides little protection given the inherently transient nature of children. It is difficult to believe students would not be regularly exposed to a cannabis billboard 500 feet from their middle school. Second, the list of protected locations is underinclusive and leaves out many locations frequented by young people. The children of Maryland are best served by maintaining the current advertising restrictions.

### **Restrictions on Commercial Speech**

The testimony submitted by the Public Health Law Clinic at the University of Maryland Carey School of Law provides a thorough discussion of the public health risks that Senate Bill 399 would create. This testimony focuses on the assertions that Maryland's current outdoor cannabis advertising restrictions violate the First Amendment. This is not the case. The First Amendment does not require the harmful change that SB 399 proposes. Maryland's attorney general reached this same conclusion when reviewing the Cannabis Reform Act last year, finding the prohibition constitutional.

Advertising is commercial speech and restrictions on commercial speech are evaluated using the *Central Hudson* analysis created by the United States Supreme Court.<sup>2</sup> This analysis looks at four key elements to determine if the government's restriction is constitutional: (1) does the

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<sup>1</sup> Pamela J. Trangenstein *et al.*, *Cannabis Marketing and Problematic Cannabis Use Among Adolescents*, 82 J. Stud. Alcohol & Drugs 288 (2021).

<sup>2</sup> *Central Hudson Gas & Elec. v. Public Serv. Comm'n*, 447 U.S. 557 (1980).



speech being restricted concern a lawful activity and is not misleading; (2) does the government have a substantial interest to justify the restriction; (3) does the regulation of speech directly advance the government's interest; and (4) is the restriction only as extensive as is necessary to serve the governmental interest. A *Central Hudson* analysis reveals that Maryland's outdoor advertising prohibition is permissible under the First Amendment.

The *Central Hudson* analysis is not only the framework for analyzing First Amendment commercial speech claims but is applicable to Article 40 of the Maryland Declaration of Rights, which provides state speech protections. This dynamic exists because Maryland courts construe the protections of Article 40 in *pari materia* with the First Amendment, which means they follow federal precedence. Accordingly, a *Central Hudson* analysis reveals that Maryland's outdoor cannabis advertising restrictions are permissible under the First Amendment and Article 40 of Maryland's Declaration of Rights.

### **Cannabis is Illegal Under Federal Law**

The first element of the *Central Hudson* test requires that the commercial speech pertain to a lawful activity to receive First Amendment protections. Cannabis is a Schedule I substance, and it is illegal to produce, distribute, possess, and use cannabis under federal law. Since cannabis is still illegal under federal law, several courts have held that cannabis advertising involves an unlawful activity and does not warrant First Amendment protections. As a result, these courts upheld cannabis advertising restrictions on this element alone.<sup>3</sup> However, even if a court were to deem cannabis sales a lawful activity because of its status under state law, Maryland's outdoor advertising restrictions are still permissible under *Central Hudson*.

### **Maryland has a Substantial Interest in the Health of its Children.**

Under the second element of the *Central Hudson* test, the government must have a substantial interest for restricting commercial speech. Courts have repeatedly held that a state has a substantial interest in protecting the physical, mental, and emotional health of children. More specifically, courts have recognized the government interest in preventing underage substance use.<sup>4</sup> Unsurprisingly, when evaluating restrictions on cannabis advertising, courts have acknowledged the state's substantial interest in preventing underage cannabis use.<sup>5</sup> As a

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<sup>3</sup> *Mont. Cannabis Indus. Ass'n v. State*, 368 P.3d 1131 (Mont. 2016); *Cocroft v. Graham*, No. 23-cv-00431 (N.D. Miss. Jan. 22, 2024)

<sup>4</sup> *See Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 564 (2001) (recognizing the government's interest in preventing underage substance use); *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325, 329-30 (4<sup>th</sup> Cir. 1996) (upholding alcohol advertising restrictions based on the substantial government interest of preventing underage alcohol consumption).

<sup>5</sup> *Seattle Events v. State*, 512 P.3d 926,935 (Wash. App. 2022) (holding that "the state has asserted a substantial government interest in preventing underage marijuana use and satisfies the second step of the *Central Hudson* test"); *Plausible Products, LLC d/b/a Hashtag Cannabis v. Washington State Liquor and Cannabis Board*, Case No.19-

result, Maryland has an uncontestable interest in protecting its children from the harms of cannabis advertising.

### **Maryland’s Advertising Restrictions Directly Advance the Health of Children**

The third element of the *Central Hudson* test requires that the challenged restriction directly advance the government’s interest. This factor requires the state to “demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.”<sup>6</sup> To establish the validity of the risk involved governments can rely on references to studies, anecdotes, history, consensus, and simple common sense.<sup>7</sup> Research shows that exposure to cannabis advertising increases the likelihood that a child will use cannabis and increases positive perceptions of cannabis in children.<sup>8</sup> Research is especially troubling with regards to outdoor cannabis advertising. A study found that children frequently exposed to cannabis billboard advertising were seven times more likely to use cannabis and nearly six times as likely to have symptoms of cannabis use disorder.<sup>9</sup> Cannabis use in children is associated with a plethora of negative outcomes including impaired cognitive development.<sup>10</sup>

With regards to effectiveness of Maryland’s outdoor cannabis advertising restrictions, the Supreme Court has already acknowledged that advertising promotes product demand and restrictions on advertising reduce demand.<sup>11</sup> This dynamic combined with the risk created by outdoor advertising proves that Maryland’s restrictions materially advance the state’s interest in protecting the health of its children.

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2-03293-6 SEA (2019) (holding that the state had a substantial interest in preventing underage cannabis consumption).

<sup>6</sup> *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (quoting *Greater New Orleans Broad. Ass’n v. United States*, 527 U.S. 173, 188, 119 S. Ct. 1923, 144 L. Ed. 2d 161 (1999)).

<sup>7</sup> *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995).

<sup>8</sup> Elizabeth J. D’Amico et al., *Gateway to Curiosity: Medical Marijuana Ads and Intention to Use During Middle School*, 29 PSYCH. ADD. BEHAV. 613 (2015); Elizabeth J. D’Amico et al., *Planting the Seed for Marijuana Use: Changes in Exposure to Medical Marijuana Advertising and Subsequent Adolescent Marijuana Use, Cognitions, and Consequences Over Seven Years*, 188 DRUG & ALCOHOL DEPEND. 385 (2018).

<sup>9</sup> Pamela J. Trangenstein et al., *Cannabis Marketing and Problematic Cannabis Use Among Adolescents*, 82 J. Stud. Alcohol & Drugs 288 (2021).

<sup>10</sup> *Marijuana and Youth: The Impact of Marijuana Use on Teen Health and Wellbeing*, CTR. FOR DISEASE CONTROL & PREVENTION (Apr. 28, 2023) <https://www.cdc.gov/marijuana/featured-topics/marijuana-youth.html>; Sanjay B. Maggirwar et al., *The Link Between Cannabis Use, Immune System, and Viral Infections*, 13 VIRUSES 1099 (2021); Venkat N. Subramaniam, *The Cardiovascular Effects of Marijuana: Are the Potential Adverse Effects Worth the High?*, 116 MO. MED 146 (2019); Ryan S. Sultan et al., *Nondisordered Cannabis Use Among US Adolescents*, 6 JAMA NETWORK OPEN 1 (2023); Will Lawn, *The CannTeen Study: Cannabis Use Disorder, Depression, Anxiety, and Psychotic-like Symptoms in Adolescent and Adult Cannabis Users and Age-matched Controls*, 36 J. PSYCHOPHARMACOL 1350 (2022).

<sup>11</sup> *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 557 (2001); *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995); *United States v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 568–69 (1980).

## **Maryland's Outdoor Cannabis Advertising Restrictions are Narrowly Tailored**

The final element of the *Central Hudson* test requires that the challenged restriction on speech be no more extensive than necessary. To satisfy this requirement, the state must show “a ‘fit between the legislature's ends and the means chosen to accomplish those ends.’”<sup>12</sup> *Central Hudson* does not require a perfect fit between the commercial speech restriction and the government’s interest, it must be reasonable and proportionate to the interest served.<sup>13</sup> Also, *Central Hudson* does not require the state to use the least restrictive means. Instead, the state must employ “a means narrowly tailored to achieve the desired objective.”<sup>14</sup>

The seminal case pertaining to advertising restrictions that seek to prevent underage substance use is *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001). In this case, the Supreme Court evaluated a series of regulations from Massachusetts that restricted the outdoor advertising of smokeless tobacco and cigars. These regulations prohibited every form of outdoor advertising at any location within a 1,000-foot radius of schools. However, the court found that these regulations served as a *de facto* ban in metropolitan areas because of the population density. The Court struck down these regulations as unconstitutional because they were not narrowly tailored. Maryland’s outdoor cannabis advertising restrictions do not invoke the constitutional issues at the center of *Lorillard* for two reasons.

First, Maryland’s outdoor advertising restrictions are less stringent than the contested regulations in *Lorillard* in critical ways. Maryland’s system prohibits advertising on “the side of a building or another publicly visible location of any form, including a sign, poster, placard, a device, a graphic display, an outdoor billboard, or a freestanding signboard.”<sup>15</sup> However, this restriction does not apply to advertisements placed on the property of the cannabis business. Contrastingly, the regulations in *Lorillard* prohibited advertisements on the property of the tobacco retailers. In addition, the regulations in *Lorillard* prohibited oral communications regarding the sale of tobacco within the exclusionary zone, a factor the Court highlighted in determining that the regulations were not narrowly tailored. Maryland does not restrict oral communications in this way. As a result of these differences, the Maryland’s restrictions prohibit less speech than the regulations in *Lorillard* and are a better fit to the government’s interest in preventing underaged cannabis use.

Second, the specific commercial speech interest the Court sought to protect in *Lorillard* is not infringed upon by Maryland advertising restrictions. In *Lorillard*, the Court focused on a business’s ability to propose a commercial transaction to an adult passing their location. The

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<sup>12</sup> Bd. of Trustees of State Univ. of N.Y. v. Fox, 492 U.S. 469, 480 (1989) (internal quotation marks omitted) (quoting *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328 (1986)).

<sup>13</sup> Bd. of Trustees of State Univ. of N.Y. v. Fox, 492 U.S. 469, 480 (1989).

<sup>14</sup> *Id.*

<sup>15</sup> MD CODE ANN., ALCOHOLIC BEVERAGES AND CANNABIS, §36-903.

court reasoned that without outdoor advertising many businesses could not communicate that they had tobacco available for sale. This is a reasonable assertion since many tobacco retailers sell a broad range of products and are not specialty stores (e.g., convenience stores). In its analysis, the court held that alternative forms of advertising, like newspaper advertisements, could not provide the same immediate communication.

This ability to propose an immediate transaction is not infringed upon by Maryland's outdoor advertising restrictions. First, cannabis dispensaries are specialty stores and by definition sell cannabis. Any adult walking past a dispensary knows that they can purchase cannabis at the business. Second, Maryland allows cannabis businesses to place advertisements on their property to help facilitate the immediate commercial transaction contemplated in *Lorillard*. Third, the *Lorillard* case was decided in 2001 and advertising technology has advanced considerably, allowing more cost effective and targeted advertising methods than billboards. Cannabis businesses can utilize age-gated social media and mobile applications to engage adult-customers. These methods present a smaller risk of youth exposure than the outdoor advertising methods subject to Maryland's restrictions.

Maryland's outdoor cannabis advertising restrictions do not create the same constitutional issues experienced in *Lorillard*. Maryland's policy is narrowly tailored to protect children from the unique risk presented by outdoor cannabis advertising, while permitting the cannabis industry ample opportunities to advertise their products through other more targeted means. Under Maryland's current advertising laws, the licensed cannabis industry generated \$800 million sales in 2023.<sup>16</sup> The success of Maryland's cannabis industry has been repeatedly highlighted by the media and the industry is expected to reach \$1.1 billion in sales in 2024.<sup>17</sup> This level of success indicates that Maryland has restricted no more speech than necessary in crafting its outdoor advertising restrictions.

### **Conclusion**

Maryland's current outdoor advertising restrictions are a critical policy tool that directly advances its interest in preventing underage cannabis use. These restrictions are narrowly tailored to address the unique risks presented by cannabis billboards and other untargeted

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<sup>16</sup> Maryland Cannabis Administration Releases 2023 Sales data and Launches Medical and Adult-use Cannabis Data Dashboard, available at [https://mmcc.maryland.gov/Documents/2024\\_Laws\\_and\\_Regulations/NOTICE%20-%20Maryland%20Cannabis%20Administration%20Releases%202023%20Sales%20Data%20and%20Launches%20Medical%20and%20Adult-use%20Cannabis%20Data%20Dashboard.pdf](https://mmcc.maryland.gov/Documents/2024_Laws_and_Regulations/NOTICE%20-%20Maryland%20Cannabis%20Administration%20Releases%202023%20Sales%20Data%20and%20Launches%20Medical%20and%20Adult-use%20Cannabis%20Data%20Dashboard.pdf)

<sup>17</sup> *Over \$87 million spent on cannabis in Maryland's first month of adult sales*, Katie Shepard, The Washington Post, Aug 2, 2023, available at <https://www.washingtonpost.com/dc-md-va/2023/08/02/maryland-july-cannabis-sales/>; *Maryland Breaks Monthly Adult-Use Sales Record; On Pace for \$1.1 Billion in 2024*, Tony Lange, Cannabis Business Times, December 13, 2023, available at <https://www.cannabisbusinesstimes.com/news/maryland-cannabis-dispensary-sales-november-2023/>.

outdoor advertising methods, while still providing ample opportunities for commercial speech. The effectiveness of these other advertising opportunities has resulted in Maryland having one of the most successful cannabis markets in the country. A reasoned analysis of relevant First Amendment jurisprudence reveals that Maryland's current restrictions are permissible under the Constitution. Senate Bill 399 is not necessary to protect commercial speech. It simply and unnecessarily endangers the health of Maryland's children. For these reasons, I request an unfavorable report on Senate Bill 399.

*This testimony is submitted by Mathew Swinburne, Managing Director of the Legal Resource Center for Public Policy-Cannabis at the University of Maryland Carey School of Law and not by the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.*

**SB399-cannabis\_billboards-ATCN-UNF-2024.pdf**

Uploaded by: Raimee Eck

Position: UNF



***Mission:** To improve public health in Maryland through education and advocacy **Vision:** Healthy Marylanders living in Healthy Communities*

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**SB 399: Cannabis - Advertising - Prohibited Locations**

**Hearing Date: March 7, 2024**

**Committee: Finance**

**Position: Unfavorable**

On behalf of the Maryland Public Health Association's Alcohol, Tobacco & Cannabis Network, we thank you all for your work to evaluate and establish alcohol regulations that will keep our communities, youth, and other at-risk populations safe. We are opposed to SB 399, which would allow cannabis advertising on billboards, except for within 500 feet of a substance use treatment facility, a primary or secondary school, a licensed childcare center, or a playground, recreational center, or public park.

Although cannabis is a legal product now for adults 21 and over, it is still illegal for youth under 21, and is associated with certain detrimental effects on mental and physical health. Cannabis use in adolescence is associated with poor school performance, higher drop-out rates in college students, and a higher likelihood of abuse or dependence in adulthood.

Exposure to cannabis advertising, including billboards, is associated with initiation of use and increased future use, lower perceptions of harm, and positive attitudes about use. Youth exposure to and engagement with cannabis promotions and brands is associated with past year cannabis use, more problematic use, and reporting negative consequences.

Alaska, Hawaii, Maine, Vermont, and dozens of cities and communities currently ban billboards. Baltimore City has a ban on alcohol and tobacco billboards that has withstood challenges in the courts. The Maryland Medical Cannabis Commission banned various types of advertising, including billboards in 2018. This policy is an excellent way to protect our youth from the known risks of cannabis and should be maintained in law.

We urge an unfavorable report on SB 399.

*The Maryland Public Health Association (MdPHA) is a nonprofit, statewide organization of public health professionals dedicated to improving the lives of all Marylanders through education, advocacy, and collaboration. We support public policies consistent with our vision of healthy Marylanders living in healthy, equitable, communities. MdPHA is the state affiliate of the American Public Health Association, a nearly 150-year-old professional organization dedicated to improving population health and reducing health disparities that plague our state and our nation.*

**SB 399 -FIN - Cannabis Advisory Council-LOO.pdf**

Uploaded by: State of Maryland (MD)

Position: UNF



# MARYLAND CANNABIS PUBLIC HEALTH ADVISORY COUNCIL

*Deondra P. Asike, M.D.*

February 7, 2024

*Sara Barra, MS*

*Dawn Berkowitz, MPH, CHES*

*Jocelyn Bratton-Payne, MSW*

*Nora Urbietta Eidelman*

*David A. Gorelick, M.D., Ph.D.*

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*Senator Benjamin Kramer*

*Elizabeth Kromm, Ph.D.*

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*Karrissa Miller, MSW*

*Madhuri Mitra, Ph.D.*

*Martin Proulx, MBA*

*Jason Semanoff*

*Leah Sera, PharmD.*

*Leigh Vinocur, M.D.*

The Honorable Pamela Beidle  
Chair, Senate Finance Committee  
3 East, Miller Senate Office Building  
Annapolis, MD 21401-1991

## **RE: SB 399 - Cannabis - Advertising - Prohibited Locations - Letter of Opposition**

Dear Chair Beidle:

The Maryland Cannabis Public Health Advisory Council (the Council) is submitting this letter of opposition for **Senate Bill (SB) 399 - Cannabis - Advertising - Prohibited Locations**. SB 399 repeals Maryland's current ban on outdoor cannabis advertising and billboards, a policy the Maryland General Assembly created just last session. In place of the ban, the bill proposes a 500-foot advertising exclusionary zone around substance use treatment facilities and select child focused locations, including schools, childcare centers, playgrounds, and public parks.

The Council opposes SB 399 because of the real risk it presents for Maryland's youth. The Council has been tasked with studying and addressing the public health impacts related to adult-use cannabis legalization. Research shows that exposure to cannabis advertising is associated with higher average use, intentions to use, positive expectancies, and negative consequences in children.<sup>1</sup> One study revealed that exposure to cannabis billboards is associated with more frequent cannabis use and cannabis use disorder in adolescents.<sup>2</sup> This is troubling because cannabis use in youth is associated with psychosis, anxiety, depression, impaired cognitive development, and other serious health challenges.<sup>3</sup> With intentionality, great forethought and acknowledgement, the Maryland General Assembly included the current outdoor advertising ban in legislation to address these risks.

Furthermore, the proposed 500-foot exclusionary zone does not adequately protect youth from exposure to cannabis billboards for two reasons. First, 500-feet is still in very close proximity to the youth focused locations the bill seeks to protect. Second, the list of protected locations is

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<sup>1</sup> *Planting the Seed for Marijuana Use: Changes in Exposure to Medical Marijuana Advertising and Subsequent Adolescent Marijuana Use, Cognitions, and Consequences Over Seven Years*, Elizabeth J. D'Amico, et al., *Drug and Alcohol Dependence*, Volume 188, 385-391 (2018).

<sup>2</sup> *Cannabis Marketing and Problematic Cannabis Use Among Adolescents*, Pamela J. Trangenstein, et al., *Journal of Studies on Alcohol and Drugs*, 82(2), 288-296 (2021).

<sup>3</sup> *Marijuana and Youth: The Impact of Marijuana Use on Teen Health and Wellbeing*, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/marijuana/featured-topics/marijuana-youth.html>.

under inclusive and leaves out many locations frequented by Maryland's children, including museums, places of worship, and sporting facilities like Camden Yards. Given the substantial public health risks that cannabis billboards present to Maryland's children, maintaining the current ban on billboards is essential.

It is also important to note that many states (AL, DE, FL, HI, MN, MT, NY, SD, and UT) prohibit the use of billboards for cannabis advertising because of the risk they present.<sup>4</sup> In addition, there are other avenues of advertising available to Maryland's cannabis industry that present less of a risk to Maryland's children. To date, the lack of cannabis billboards has not harmed the industry. Maryland's legal cannabis sales totaled approximately \$800 million in 2023.<sup>5</sup> The repeal of Maryland's cannabis billboard ban is unnecessary and creates a real risk for youth in Maryland.

The Council respectfully urges this Committee for an unfavorable report on SB 399. This bill is a step backwards, and conflicts with Maryland's desire to protect youth from the harms of cannabis.

Sincerely,



Deondra Asike, M.D.  
Chair, Maryland Cannabis Public Health Advisory Council

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<sup>4</sup> ALA. ADMIN. CODE R. 538-X-4.17; DEL. CODE ANN. TIT. 16, § 4919A; FLA. STAT. ANN. § 381.986; HAW. CODE R. § 11-850-145; MINN. STAT. § 342.64; MONT. ADMIN. R. 42.39.123; N.Y. CANNABIS LAW § 86; S.D. ADMIN. R. 44:90:10:14.01; and UTAH ADMIN. CODE R. 4-41a-403.

<sup>5</sup> *MCA Medical and Adult-Use Cannabis Data Dashboard*, Maryland Cannabis Administration, available at <https://mmcc.maryland.gov/Pages/Data-Dashboard.aspx>.

**SB399 Billboard letter\_neutral.pdf**

Uploaded by: Molly Mitchell

Position: INFO



# THE MARYLAND COLLABORATIVE

TO REDUCE COLLEGE DRINKING AND RELATED PROBLEMS

## LETTER OF INFORMATION: SB 399

Honorable Pamela Beidle  
Chair Maryland Senate Finance Committee  
Annapolis, MD 21401

Dear Senator Beidle:

We are writing to provide important research findings on the impact of cannabis billboards on student health and academic success as you consider SB 399. If passed, this bill would repeal the current prohibition on billboard advertising for cannabis licensees, products, or services and replace it with a prohibition of advertising within a certain distance of sensitive use locations. As members of the Maryland Collaborative to Reduce College Drinking and Related Problems, we are leaders of colleges and universities across the state using research-based evidence to address the significant public health problems of college student substance use and mental health. Billboards advertising cannabis products are linked to an increase in cannabis use disorder among young people, threatening their health and academic success.

Research shows that young people exposed to billboards advertising cannabis are more likely to use cannabis and more likely to develop cannabis use disorder. A national survey conducted among adolescents in 2014–2015 found that exposure to cannabis billboards was associated with greater prevalence of cannabis use.<sup>i</sup> Similarly, another study found that adolescents who often saw cannabis billboards had 7 times the odds of weekly use and 6 times the odds of cannabis use disorder.<sup>ii</sup> Cannabis use disorder is characterized by the inability to stop using cannabis even though it is causing health and social problems. Other signs of cannabis use disorder include using cannabis even though it causes problems at home, school, or work, and using cannabis in high-risk situations such as while driving a car.<sup>iii</sup>

Our students come to college with high hopes and dreams. Please consider what impact the research suggests SB 399 will have on our students' health, academic success, and the fulfillment of those dreams.

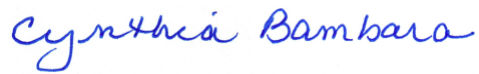
Sincerely,

Chancellor Jay Perman  
University System of Maryland  
Co-Chair, Maryland Collaborative

President Marylou Yam  
Notre Dame of Maryland University  
Co-Chair, Maryland Collaborative

President Heidi M. Anderson  
University of MD Eastern Shore

President Valerie Sheares Ashby  
University of Maryland Baltimore County



President Cynthia Bambara  
Allegany College of Maryland



President Nora Demleitner  
St. John's College



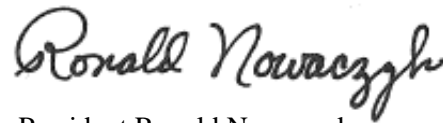
President Kent Devereaux  
Goucher College



President Mark Ginsberg  
Towson University



President Richard Midcap  
Garrett College



President Ronald Nowaczyk  
Frostburg State University



President Terrence Sawyer  
Loyola University Maryland

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<sup>i</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5716812/>

<sup>ii</sup> <https://www.jsad.com/doi/abs/10.15288/jsad.2021.82.288>

<sup>iii</sup> <https://www.cdc.gov/marijuana/health-effects/addiction.html>