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“You think that your silence on certain topics, perhaps in the face of injustice, or unkindness, or mean-spiritedness, causes others to reserve judgement of you. Far otherwise; your silence utters very loud: you have no oracle to speak, no wisdom to offer, and your fellow men have learned that you cannot help them.”—Ralph Waldo Emerson

May 1, 2012

Charlottesville City Council
605 E. Main Street
Charlottesville, VA 22902

Re: Resolution to de-emphasize primary arrests for marijuana

Dear Council Members:

A source of pride for those fortunate enough to call it home, Charlottesville routinely ranks among the most appealing places to live in the country, whether because of its restaurants, its outdoor attractions, or its proximity to historic landmarks, including Thomas Jefferson’s Monticello.

Yet while Charlottesville is indeed a charming place to visit and live, it is not immune to many of the problems that plague other, less vibrant communities such as urban homelessness, poverty, drug dealing and gang activity. The challenge is how to adequately address these problems in a compassionate and just manner without becoming overly legalistic and impersonal, thereby sacrificing the values and atmosphere which have endeared our community to so many.

The City Council’s decision to entertain a resolution that would declare marijuana offenses the lowest law enforcement priority is particularly significant, coinciding as it does with polls indicating that increasing numbers of Americans believe the federal government’s so-called “War on Drugs”—specifically marijuana—to be a failure. Indeed, after more than 40 years and at least \$1 trillion, America’s “war on drugs” ranks as the longest-running, most expensive and

Moreover, a November 2011 study by researchers at Duke University found that young blacks are arrested for drug crimes *ten* times more often than whites.¹¹ Likewise, a 2008 study by the ACLU concluded that blacks in New York City were five times more likely to be arrested than their white counterparts for simple marijuana possession.¹² Latinos were three times more likely to be arrested.¹³ This disproportionate approach to prosecuting those found in possession of marijuana is particularly evident in California, where African-American marijuana offenders were imprisoned 13 times as much as non-blacks in 2011.¹⁴ In fact, between 1990 and 2010, there was a 300% surge in arrests for marijuana possession for nonwhites.¹⁵

Additionally, despite 40 years of military funding to eradicate foreign drug supplies, increased incarceration rates, and more aggressive narcotics policing, the war on drugs has done nothing to resolve the issue of drug addiction. A European Union Commission study determined that “global drug production and use remained largely unchanged from 1998 through 2007.”¹⁶ The National Survey on Drug Use and Health revealed that as recently as 2005, 58% of the public found marijuana readily available, with 50% of 12 to 17 year olds declaring it easy to get.¹⁷ In fact, the only things that have changed are that drugs are cheaper and more potent,¹⁸ there are more people in prison, and the government is spending more taxpayer money in its futile attempts at curbing marijuana use.

Moreover, for those who fear that de-emphasizing marijuana prosecutions might lead to an increase in drug use, studies show the contrary to be the case—that decriminalization actually results in reduced drug usage. For example, in 2001, Portugal abolished all criminal penalties for the possession of illegal drugs for personal use, including for hard drugs such as cocaine and heroin. Within five years illegal drug use amongst teenagers had dropped, as had the rate of HIV infection via sharing dirty needles. Attempts to seek therapy for addiction had also more than doubled. Rather than putting people in jail, the Portuguese authorities brought drug offenders before panels of social workers and psychologists who would offer help to the individuals, although the help could be refused without criminal penalty. As a Cato Institute study documenting the improvement of Portuguese society since the decriminalization of drugs

¹¹ Maia Szalavitz, “Study: Whites More Likely to Abuse Drugs Than Blacks.” *Time*, November 7, 2011. <http://healthland.time.com/2011/11/07/study-whites-more-likely-to-abuse-drugs-than-blacks/> (accessed April 24, 2012).

¹² Jacob Sullum, “The War on Drugs: What's Race Got to Do With It?” *Reason* (April 6, 2009), <http://reason.com/blog/2009/04/06/the-war-on-drugs-whats-race-go> (accessed April 24, 2012).

¹³ Jacob Sullum, “The War on Drugs: What's Race Got to Do With It?” *Reason* (April 6, 2009), <http://reason.com/blog/2009/04/06/the-war-on-drugs-whats-race-go> (accessed April 24, 2012).

¹⁴ Center on Juvenile and Criminal Justice, Last modified November 2011. Accessed April 24, 2012. http://cjcj.org/files/Misdemeanor_marijuana_arrests.pdf.

¹⁵ Center on Juvenile and Criminal Justice, Last modified November 2011. Accessed April 24, 2012. http://cjcj.org/files/Misdemeanor_marijuana_arrests.pdf.

¹⁶ Peter Hakim, “Rethinking US Drug Policy.” Last modified February 2011. Accessed April 24, 2012. http://www.thedialogue.org/uploads/Documents_and_PDFs/Documents_and_PDFs_2/Rethinking_US_Drug_Policy.pdf. p. 4.

¹⁷ Jon Gettman, “Lost Taxes and Other Costs of Marijuana Laws,” <http://www.drugscience.org/Archive/bcr4/3Availability.html>.

¹⁸ Peter Hakim, “Rethinking US Drug Policy.” Last modified February 2011. Accessed April 24, 2012. http://www.thedialogue.org/uploads/Documents_and_PDFs/Documents_and_PDFs_2/Rethinking_US_Drug_Policy.pdf. p. 4.

concluded, “Judging by every metric, decriminalization in Portugal has been a resounding success.”¹⁹

To take this discussion out of the abstract and put it in a more personal context, I have been contacted by several Charlottesville residents whose lives have been irreversibly impacted as a result of aggressive, zealous marijuana policing by local authorities. One such person is Philip Cobbs, an unassuming 53-year-old African-American man and Albemarle resident who cares for his blind, deaf 90-year-old mother and lives on a 39-acre tract of land that’s been in his family since the 1860s. Cobbs’ experience is particularly heartbreaking and a prime example of why the resolution before the City Council is a step in the right direction towards acknowledging the racist impact of the federal government’s drug war and refusing to contribute to its ill effects.

On July 26, 2011, while spraying the blueberry bushes near his house, Cobbs noticed a black helicopter circling overhead. After watching the helicopter for several moments, Cobbs went inside to check on his mother. By the time he returned outside, a swarm of unmarked police SUVs had driven onto his property, and police in flak jackets, carrying rifles and shouting unintelligibly, had exited the vehicles and were moving toward him.²⁰ The officers claimed they had sighted marijuana plants growing on Cobbs’ property and ordered Cobbs at gun point to produce them. Distressed and intimidated by the show of force, Cobbs indicated his lack of knowledge about any marijuana plants on his property. In response, one of the police officers radioed up to the helicopter, which then directed the officer to an area in the yard where an oak tree had fallen. Within the limbs of the fallen tree and an adjoining bush were two plants protruding, which the officers claimed were the alleged marijuana plants.

The police then asked to search Cobbs’ greenhouse, which he had used that spring to start tomato plants, cantaloupes and watermelons, as well as asters and hollyhocks and which his attorneys contend was the officers’ prime objective from the start. The search of the greenhouse turned up nothing more than used tomato seedling containers. Incredibly, police had not even bothered to secure a warrant before embarking on their raid of Cobbs’ property. The raid was part of a routine sweep of the countryside by a joint task force comprised of state and local officials (the Virginia State Police, the Albemarle County Police Department and the Jefferson Area Drug Enforcement task force) in search of pot-growing operations that had to cost taxpayers in the thousands, at the very least.

Despite the fact that he had no knowledge about the presence of what officials claimed were marijuana plants growing on his property, he was still charged with misdemeanor marijuana possession, which carries maximum penalties of 30 days in jail and/or a \$500 fine. Despite the fact that the Commonwealth did not have photographic evidence to back up their claims about the marijuana plants on Cobbs’ property or the fact that it took them more than a month to issue a citation in the case, a general district court judge sentenced Cobbs to 10 days in jail but suspended the jail time, and also suspended his driver’s license for six months. Attorneys

¹⁹ Maia Szalavitz, “Drugs in Portugal: Did Decriminalization Work?” *Time* (April 26, 2009), <http://www.time.com/time/health/article/0,8599,1893946,00.html#ixzz1tYF7Wg3G>.

²⁰ Lisa Provence, “Reefer madness? Copter and SWAT team weeded out 2 plants on their property,” *The Hook*, <http://www.readthehook.com/101282/2-plants-citizen-terrorized-swat-team-pot-raid> (accessed April 24, 2012).

for The Rutherford Institute have appealed Cobbs' case. However, if Cobbs is forced to forfeit his driver's license, he may have to stop caring for his deaf and blind 90-year-old mother at home and put her in a nursing home.

Thankfully for Cobbs, no one was hurt during the warrantless raid on his property. That is not the case for many Americans who find themselves on the wrong end of a SWAT team raid in search of marijuana. Fifty thousand such SWAT team raids occur annually across America, with botched SWAT team raids resulting in the loss of lives, including children and the elderly.²¹ For example, on May 5, 2011, a SWAT team kicked open the door of ex-Marine Jose Guerena's home. Thinking his home was being invaded by criminals, Guerena told his wife and child to hide in a closet, grabbed a gun and waited in the hallway to confront the intruders. He never fired his weapon. In fact, the safety was still on his gun when he was killed. The SWAT officers, however, not as restrained, fired 70 rounds of ammunition at Guerena—23 of those bullets made contact. Guerena had had no prior criminal record, and the police found nothing illegal in his home.²²

No one wants to see such tragedies take place in Charlottesville. Yet if we continue along our present course, it will only be a matter of time before someone is fatally injured, whether it be a member of our community or a law enforcement official. Clearly, something must be done.

In adopting the resolution to de-emphasize primary arrests for marijuana, the City Council has an opportunity to set an example for the Commonwealth and the country of what it means to be a community that prioritizes people over policy. Doing so would also show that Charlottesville is progressive enough to act on Americans' changing attitudes towards marijuana possession, recognizing that the nation's drug war is a failure and that a new direction is sorely needed. A growing number of law enforcement officials and national organizations are also calling for an end to the drug wars, including the US Conference of Mayors,²³ the Global Commission on Drug Policy, which includes former UN Secretary General Kofi Annan, former US Secretary of State George Schultz, and former presidents of Mexico, Colombia, and Brazil,²⁴ and the NAACP.

At the very least, marijuana should not be a primary focus of law enforcement. While we are fortunate to have some very fine individuals working with our local law enforcement, we are doing them and ourselves a disservice if we allow more pressing problems to go unaddressed in

²¹ John W. Whitehead, "The War on Drugs Has Become the War on the American People," The Rutherford Institute (Oct. 17, 2011), https://www.rutherford.org/publications_resources/john_whiteheads_commentary/the_war_on_drugs_has_become_the_war_on_the_american_people.

²² Radley Balko, "Jose Guerena Killed: Arizona Cops Shoot Former Marine In Botched Pot Raid," *Huffington Post* (Last modified May 25, 2011). Accessed October 12, 2011. http://www.huffingtonpost.com/2011/05/25/jose-guerena-arizona-_n_867020.html.

²³ Jonah Engle, "40 Years of a Pointless, Tragic Drug War -- But As Feds Crack Down, Reformers Fight Back," *Alternet* (December 27, 2011), http://www.alternet.org/drugs/153585/40_years_of_a_pointless,_tragic_drug_war_-_but_as_feds_crack_down,_reformers_fight_back/ (accessed April 24, 2012).

²⁴ Stephanie Condon, "NAACP calls for end to 'war on drugs,'" *CBS News* (July 27, 2011), http://www.cbsnews.com/8301-503544_162-20084203-503544.html (accessed April 24, 2012).

order to carry out the government's misguided drug war policies. I believe the Charlottesville Police Department could effectuate such a policy without any encumbrances.

It's time to revisit our drug policies and laws, and adopting this resolution would be a modest and appropriate step in the right direction. Jeffrey Miron, an economics professor at Harvard, has calculated that marijuana prohibition costs the Commonwealth \$246 million a year, including the process of arrest, prosecution, and incarceration of marijuana users.²⁵ Imagine what could be done with that money if it were re-routed to more worthwhile endeavors.

Adopting this resolution may not be easy or politically expedient for some on the Council. However, we as a community cannot afford to ignore this issue any longer. I, for one, refuse to remain silent if by the alternative—de-emphasizing primary arrests for marijuana—we can free up much-needed resources for other trouble spots in our community such as urban homelessness, poverty, hard-core drug dealing and gang activity and, in the process, ensure that good people such as Philip Cobbs are not rendered casualties of a misguided war on drugs.

To this end, I encourage all City Council members to vote yes on this resolution.

Sincerely yours,



John W. Whitehead
President

cc: Tim Longo, Charlottesville Chief of Police

²⁵ Lisa Provence, "Reefer madness? Copter and SWAT team weeded out 2 plants on their property," *The Hook*, <http://www.readthehook.com/101282/2-plants-citizen-terrorized-swat-team-pot-raid> (accessed April 24, 2012).