



September 13, 2019

The Honorable Rep. Alexander X. Mooney  
2440 Rayburn House Office Building  
Washington, DC 20515

The Honorable Rep. Thomas Massie  
2453 Rayburn House Office Building  
Washington, DC 20515

Regarding: **H.R.2071 (Second Amendment Protection Act)**  
Position: **Support (Amendments Requested)**

Dear Representatives Mooney and Massie,

I write you today on behalf of Firearms Policy Coalition (FPC) and our hundreds of thousands of members, supporters, and advocates across the country regarding H.R.2071 (entitled “Second Amendment Protection Act”, hereinafter “H.R.2071” or “the Act”). As written, the Act would:

- 1) Exempt an “individual using marihuana for a medical purpose in accordance with State law” from the general proscription at 18 U.S.C. § 922(d)(3) (prohibiting “any person” from selling otherwise providing any firearm or ammunition “to any person knowing or having reasonable cause to believe that” they are “an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)”);
- 2) Exempt an “individual using marihuana for a medical purpose in accordance with State law” from the general proscription at 18 U.S.C. § 922(g)(3) (making it a crime for “any person” “who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))” to “ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”); and,

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- 3) Provide that such amendments would take effect 90 days after the date of enactment of the Act.

The Act addresses an important issue affecting the fundamental rights of an unknowably large number of Americans. It's not often that we get behind legislation; our standards for sound public policy are purposefully high. That said, we are pleased to offer our support of H.R.2071, and respectfully suggest a few simple amendments we believe would serve the intent of the legislation, the interests of the People, and further respect human rights.

### **Proposed Amendment no. 1**

As you are no doubt aware, the general trend has been toward decriminalizing not only medical use, but other conduct relating to the possession, use, and sale of marijuana. Because we believe such lawful, victimless conduct should never result in the forfeiture of basic human rights, FPC respectfully requests that Section 2 of the Act be amended as shown in the markup below:

- (a) Exemption For ~~Medical~~ Marihuana.—Section 922 of title 18, United States Code, is amended—

- (1) in subsection (d)(3), by inserting before the semicolon the following: “(except that an individual shall not be treated as an unlawful user of or addicted to any controlled substance based on the individual acquiring, possessing, selling, disposing of, or using marihuana ~~for a medical purpose~~ in accordance with State law)”; and

- (2) in subsection (g)(3), by inserting before the semicolon the following: “(except that an individual shall not be treated as an unlawful user of or addicted to any controlled substance based on the individual acquiring, possessing, selling, disposing of, or using marihuana ~~for a medical purpose~~ in accordance with State law)”.

**Proposed Amendment no. 2**

Because of the status of state and local laws, FPC suggests that the Act be amended to pre-empt laws and policies of states and local governments that conflict with the Act and, as federal law currently does, unconstitutionally and irrationally deny access to important liberties and rights that pre-exist government itself.

Article 1, Section 8 of the United States Constitution provides, in pertinent part, that: “The Congress shall have power to . . . make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.”

The Second Amendment to the Constitution provides that: “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”

Section 1 of the Fourteenth Amendment to the Constitution provides, in relevant part, that: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” And Section 5 provides that: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

Thus, to preserve the rights of the People and the privileges or immunities of citizens of the United States, the Congress is certainly within its proper constitutional authority to ensure that the several States and U.S. territories, and their political subdivisions, are similarly prevented from penalizing or imprisoning a person for the same conduct expressly exempted from § 922 under the Act. The Act should be appropriately amended to provide for such express pre-emption.

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We sincerely thank you for your leadership on this issue and for putting forth this positive, rational legislation to reduce the number of good people denied access to their fundamental, individual human rights. We look forward to supporting this legislation, and to its successful passage and enactment.

Please do not hesitate to contact me at (916) 378-5785 or [policy@fpchq.org](mailto:policy@fpchq.org) if we can be of any further assistance to you or your office.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Larosiere", written in a cursive style.

Matthew Larosiere  
Director of Legal Policy  
Firearms Policy Coalition

cc: Philip Watson, FPC Legislative Advocate