

Dear Editor,

I read your narrative on the recent Constitutional issue with S.150, along with your opinion on the merits of S.150. Thank you for being willing to let me “sound off” about your latest article on medical marijuana.

These issues are mutually exclusive and I will address them below.

Constitutional Issue

With all due respect, I believe the “Origination Clause” contains an important Constitutional principle that goes to the heart of the “Separation of Powers” doctrine. That was rightly upheld by the presiding House Speaker *Pro-tempore*’s deliberate and transparent ruling.

Rule 5.3 of the House Rules states:

Any bill or resolution considered by the House of Representatives, upon second reading, that raises revenue must conform to the provisions of Article III, Section 15 of the South Carolina Constitution.

Article III, Section 15 states:

Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; all other Bills may originate in either house, and may be amended, altered or rejected by the other.
(Emphasis added).

I think the Editor will agree that our founders were suspicious and wary of any and all NEW TAXES (as conservatives should continue to be today!). Article III, Section 15 is an important part of our checks and balances and separation of powers. See, Article I, Section 8.

The reason our founders included this provision in our SC Constitution (and in the US Constitution) was to ensure that bills raising new revenue are not invented by a Senate, whose members are elected every four years, and preside over vast populations, but instead, are originated by the House, whose members are elected every two years, with less electoral populations and “closer to the people.”¹

Will the Editor not also agree that true Conservatives and Libertarians alike should understand the importance of checks and balances, separation of powers and adhering to Constitutional principles? Will the Editor not also agree that the SC Constitution secures our blessings of liberty, and must not be weakened, thereby undermining the very freedoms and order it sustains?

¹ A similar provision is contained in the US Constitution. “Consistent with the English requirement that money bills must commence in the House of Commons, the Framers expected that the Origination Clause would ensure that “power over the purse” would lie with the legislative body closer to the people.” “Hands off my Purse! Why money bills originate in the House. <https://www.heritage.org/the-constitution/report/hands-my-purse-why-money-bills-originate-the-house>

Assuming there is agreement with the above, I now turn to the *constitutionally defective bill we were handed in the House enumerated as S.150*. The very first thing S.150 does, after definitions, is to create a NEW, ADDITIONAL 6% sales TAX, on the sale of every marijuana product marijuana, in addition to the normal sales taxes.² This NEW TAX AND ADDITIONAL TAX, is an enabling tax that attempts to fund the new \$10,000,000+ expense to DHEC (and taxpayers) as estimated by the fiscal impact statement filed with the bill.³ See, 44-53-2020 and 44-53-2060 in S.150.

Based on the above, the only rational conclusion is that S.150 creates a NEW TAX that “raises revenue” according to the plain meaning of the words in Article III, Section 15. The analysis would end here, but for arguments stemming from court decisions and non-binding dicta in those decisions.

As courts often do, they have gone beyond the plain meaning of the statute, and have put their own interpretation on the meaning of “raising revenue.” Two creative arguments are made from this “precedent” and will be addressed below.

First, it seems the judicial “precedent” is now settled that mere “incidental” taxes like fees and penalties are not “revenue raising” in the strict sense of the words. In other words, if there were no NEW TAX in S.150, and the bill merely authorized DHEC to impose fees and penalties (which it actually does in numerous instances), the constitutional issue of compliance with Article III, Section 15 may be answered in the affirmative.

The Speaker *Pro-tempore*, however, correctly distinguished “fees and penalties” from a NEW TAX in his very careful, deliberate, accurate and transparent ruling. His opinion was consistent with the precedents and a 2015 Attorney General Opinion. More importantly, it was consistent with the Origination Clause of the SC Constitution.

Second, there is also what I call the “main purpose” argument put forth in quotes by the Senator from Beaufort. This argument arises from language in some 100 year-old cases stating that a tax must be the “primary or main purpose” of the bill. While it may be said that one of the “primary or main purposes” of the bill is to establish the marijuana industry in our state, one must admit that the creation of a NEW enabling TAX at the beginning of the bill is also a main purpose of the bill. A 2015 Attorney General opinion concluded that a bill to fix our roads through a NEW sales TAX on every gallon of gas must be generated in the House of Representatives under Article III, Section 15. While clearly one could argue that the primary purpose of that bill was to fix our roads, and not the NEW sales tax, this was rejected by implication.

² As the Editor correctly stated in the article, Marijuana products are expressly NOT exempt from current sales tax, thus current sales tax would apply to marijuana products IN ADDITION TO normal sales tax.

³ The bill charges DHEC with licensing, regulating and monitoring 270 new “Cannabis Pharmacies, 15 “Cultivation” operations, 30 processing Centers, and five licensed transporters throughout the state.

Finally, I challenge critics to listen to the Speaker *Pro-Tempore's* ruling found on the legislative online website. He was gracious to all sides and allowed anyone who wished to speak to do so. He took as much case law and materials as both sides would submit. He deliberated for three hours, and did his own research. He was completely transparent and shared his reasoning. He applied the law and precedents to the facts of this case and made the ruling that the "Origination Clause" of the SC Constitution required him to make. I realize the Editor may not like the result, but will he not agree that the constitutional principles of separation of powers, and the delegation of "the power of the purse" to the House of Representatives must prevail over the affection he has for marijuana and S.150?

Merits of S.150

Although my personal position on the remainder of the bill is entirely irrelevant to the issue of constitutionality, I will state with all sincerity that **I am in favor of medical marijuana.** Most people do not know that we already have legal prescription medicines containing THC that are approved by the FDA and can actually be legally prescribed by a doctor. These include:

- **Epidiolex (for seizures)**
- **Sativex (for MS)**
- **Marinol (for stimulation of appetite)**

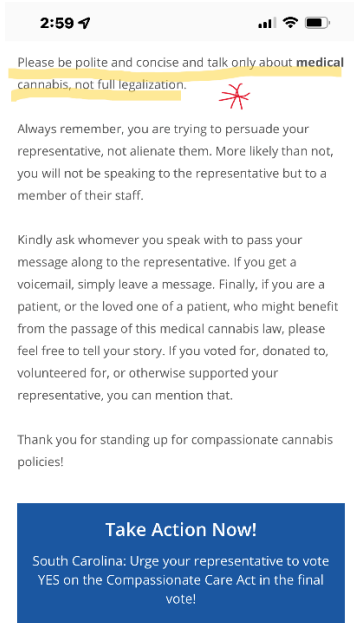
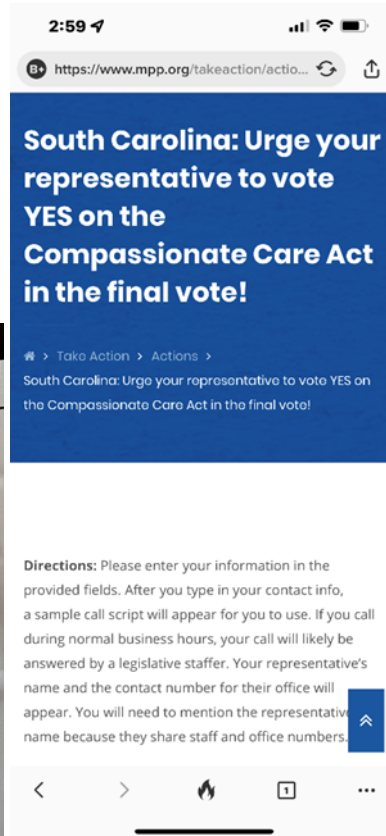
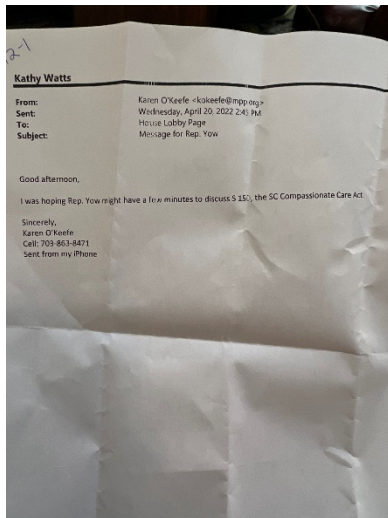
So far, real science and clinical trials have not confirmed the benefits of marijuana for other conditions. In fact, the NIH informs us that contrary to popular belief, research shows Marijuana is not recommended for treating Glaucoma, for example. For those who wish to try marijuana for their ailments there are reportedly many clinical trials available, especially for cancer patients.

While medicine derived from marijuana can be helpful, as described above, marijuana can be very dangerous. Marijuana is contra-indicated for adolescents and is linked to addiction, schizophrenia, slowed brain development, depression and suicide. E.g., <https://nida.nih.gov/news-events/news-releases/2021/06/cannabis-use-may-be-associated-with-suicidality-in-young-adults> . Marijuana is also contra-indicated in pregnant women, causing lower birth weight and abnormal neurological development.

<https://www.cdc.gov/marijuana/health-effects/pregnancy.html>

Unfortunately, *real* medical marijuana medicine does not fit the narrative of the marijuana industry. This is because the industry goal is recreational marijuana in all 50 states. This is no secret—it is just a Google search away.

One such organization is the Marijuana Policy Project--just Google mpp.org and you will see that the "Marijuana Policy Project" advocates for full legalization-*except they don't want us dumb SC people to know*. This organization had a lobbyist contacting members in the House a few days ago, calling members out to discuss the marijuana bill. I went to their website and it had an action alert to talk to your SC Representative, but it said "Please...talk only about medical cannabis, not full legalization." That must be all they want--**yeah, right.**



While I favor real medical marijuana that can help people, I oppose recreational marijuana. Unfortunately, S.150 is, simply put, *Recreational Marijuana Part 1*. It is really strange to me that whatever these lobbyists say, the opposite seems to be true. They claim that S.150 is “one of the most conservative medical marijuana bills in the country”—unfortunately, in many respects, S.150 is one of the most liberal marijuana bills in the country.

A recent survey touted by the marijuana lobbyists asked if South Carolinians were in favor of “medical marijuana if approved by their doctor.”⁴ If I were asked that question, without more information, I would certainly have been one of those who answered yes.

⁴ The SC Medical Association is an organization representing doctors in SC. SCMA strongly opposes S.150.

How would we answer if the survey had asked:

Are you in favor of S.150 if:

- **It sets up the infrastructure for future recreational marijuana by mandating DHEC to license:**
 - 270 marijuana dispensaries,
 - 15 cultivation centers,
 - 30 processing facilities to make marijuana products,
 - 5 marijuana laboratories,
 - 4 transporter organizations?
- **If the bill sets up the above infrastructure at taxpayer expense to the tune of \$8,000,000 to \$10,000,000 in unfunded mandates per year for the next ten years?**
- **If your doctor cannot prescribe it, and a licensed pharmacy cannot legally sell it?**
- **If it encourages a new breed of “Marijuana Doctors” who can order marijuana for as many patients as they like?**
- **If it sets up the most lenient marijuana DUI law in the nation?** (While other “marijuana states” have set blood level limits like zero tolerance or 5 nanograms of THC per liter, this bill says the mere presence of THC in the blood is not evidence of intoxication.)
- **If it allows the sale of dangerous extracts with 90% THC that are banned in other states?** (“Crumble,” “shatter,” “budder” and other dangerous extracts are banned in other states)
- **If it allows the sale of dangerous marijuana products like suppositories and nasal sprays that are banned in other states?**
- **If it specifically allows vaping of THC, which the FDA specifically warns not to do?**
- **If it gives small businesses a binary choice of either allowing cardholders to work or adopting an expensive and strict “Zero Tolerance” drug enforcement policy?**
- **If it causes Workers Compensation and other insurance rates to increase?**
- **If it allows dangerous extraction processes that are banned in other states, exposing users to dangerous chemicals like hexane, propane, butane and denatured alcohol?**

- If it allows convicted drug felons to have marijuana cards?
- If it allows people with distant felonies and smaller recent drug offenses to work in marijuana establishments?
- If it allows marijuana to be kept in schools for underage patients, requiring school nurses to administer?
- If it prohibits discrimination against card holders in hiring, discipline and firing in businesses and schools?
- If it allows marijuana dispensaries within plain view of schools, and right next to churches?
- If it requires Landlords to allow marijuana use by tenants, including vaping?
- If it causes all card holders to become felons if they own weapons or purchase weapons?
- If it allows minors to get a card through parental or guardian consent, even though marijuana use is particularly dangerous to the mental health of adolescents?
- If it makes the fact of marijuana use by a party irrelevant in Family court cases including custody cases?
- If it gives DHEC (with all its' current problems) the new and massive responsibility of licensing, regulating, monitoring and enforcing the new marijuana laws governing 324 marijuana establishments throughout the state?

Finally, despite the bill being dubbed “compassionate care,” marijuana is not always “compassionate”—especially when it is not regulated. The family of SC resident Larry Duane Parris is grieving after he was killed in February by American Idol contestant Caleb Kennedy. The news accounts stated:

The country music singer is accused of driving his truck into Larry Duane Parris, 54, who was standing just outside his shop where he fixes boats in Spartanburg County, authorities said. The impact of Tuesday's crash drove Parris inside the shop, where he was found by his daughter, Solicitor Barry Barnette said.

In a 911 call, Parris' daughter can be heard screaming for help, and Kennedy can be heard on the tape saying he was sorry as he held the dying man inside the shop, the solicitor said. Parris was later pronounced dead at a hospital.

Kennedy told deputies after the crash that *he had taken a “deep draw” from a vaping device and then felt its effects while driving, a prosecutor said in court Wednesday.*

<https://abcnews.go.com/Entertainment/wireStory/police-american-idol-star-marijuana-crash-82799437> .



Larry Duane Parris, his daughter Kelsey and wife Donna.

<https://www.msn.com/en-us/news/crime/warrant-american-idol-star-under-influence-of-marijuana-in-deadly-crash/ar-AATDQDo>

Is it any wonder the following South Carolina organizations are all opposed to S.150?

- S.C. Republican Party
- SC Medical Association
- Palmetto Family Council
- S.C. Solicitor's Association
- S.C. Victim Assistance Network
- S.C. Christian Chamber of Commerce
- S.C. Police Chiefs Association
- S.C. Sheriff's Association
- S. C. Law Enforcement Division
- S.C. Baptist Convention
- Catholic Diocese of Charleston (S.C.)
- S.C. Concerned Women for America

These are just a few of the reasons I will not be in favor of the *New York/California "marijuana lobbyist" version* of so-called medical marijuana, if and when it comes to the floor of the House in a constitutionally sound manner.

Rep. John McCravy
SC House District 13