Education - Legislation - Advocacy

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Senator Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Michele M. Leonhart to be Administrator of the Drug Enforcement Administration

Via fax, email and postal mail

July 23, 2010

Dear Chairman Leahy,

Over the past fifteen years, the Drug Enforcement Administration (DEA) has waged a wasteful and pointless war against farmers and businesses who seek to grow and process industrial hemp, a plant which was grown by American farmers for centuries dating back to the founding of our nation.

Industrial hemp is the non-drug oilseed and fiber varieties of *Cannabis sativa* L. Because they contain 0.3% or less tetrahydrocannabinol (THC), industrial hemp varieties of *Cannabis* have no potential whatsoever to be used as a recreational drug.

Today more than thirty industrialized nations allow their farmers to grow industrial hemp and recognize that industrial hemp and marihuana are distinct. International law also recognizes this distinction by exempting hemp farming in the United Nations Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. In fact, Article 28 states that:

> *"This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes."*

A number of states, including Maine, Maryland, North Dakota, Oregon, Vermont and West Virginia, have passed state laws allowing for hemp farming. A number of other states have passed resolutions urging the DEA to allow farmers to once again grow industrial hemp.

Despite these facts – and overwhelming public support – the DEA has refused to allow farmers to grow industrial hemp.

In addition, the DEA has failed to rule on several state-licensed North Dakota farmer applications – after more than forty-one months now. Farmers Wayne Hauge and Rep. David Monson of North Dakota both received state licenses to grow hemp and applied for DEA licenses on February 12, 2007. As of today, they have not received a decision from the agency.

Michele M. Leonhart, the nominee for Administrator and a lifetime DEA bureaucrat, severely lacks the vision to change policy on hemp farming for the better. From August of 2003 to the present, Leonhart has held the positions of Acting Deputy Administrator, Deputy Administrator and Acting Administrator and has been in a position to help craft and administer the DEA's strategy against the legitimate hemp industry. Under her leadership, the DEA's war on hemp farming has increased and expanded to include attacking manufacturers of hemp products by issuing rules to ban hemp foods. For these reasons and others, Vote Hemp strongly opposes the nomination of Michele Leonhart to be Administrator of the DEA.

The Obama administration has recently directed the DEA to respect state laws regarding the medical use of drug strains of *Cannabis*, yet farmers in the U.S. with state licenses to grow hemp remain at risk of DEA raids, possible jail time and forfeiture of their farms. Why? Because DEA fails to distinguish non-drug industrial hemp, the oilseed and fiber varieties of *Cannabis*, from the drug varieties of *Cannabis*. Hemp is, however, a legitimate, sustainable, profitable and **non-drug crop** that generates a $400+ million retail industry in the U.S. today.

For the last four growing seasons, from 2007-2010, farmers in North Dakota have received licenses from the North Dakota Department of Agriculture to grow industrial hemp. However, despite the state's authorization to grow the crop, these farmers have not been able to grow hemp due to the DEA's refusal to issue federal licenses or to allow the states in general to regulate hemp farming on their own.

In January of 2007, North Dakota's Agriculture Commissioner Roger Johnson accepted the first application from a farmer for a state industrial hemp license. The license went to Representative David Monson, a farmer and state Assistant House Majority Leader, now Speaker of the House, ten years after the first hemp bill was passed and made law in the state. Commissioner Johnson hand-delivered license applications to the DEA on February 13, 2007 from Representative Monson and Wayne Hauge, a farmer from Ray, North Dakota, along with the farmers' **non-refundable $2,300 annual registration fees**, hoping to help them get their DEA licenses in time for Spring planting. After several months of fruitless negotiations between the DEA and North Dakota state officials, the state legislature responded to the federal agency's obstructionism by overwhelmingly passing HB 1020. They added the language "A license required by this section is not conditioned on or subject to review or approval by the United States Drug Enforcement Agency" to the bill, which amended Section 4-41-02 of the North Dakota Century Code, the section containing the industrial hemp licensing and reporting requirements, and it was quickly signed into law by Governor John Hoeven.

Commissioner Johnson spent nearly a year trying to work out an agreement with the DEA, to no avail, and it is now clear that the DEA is never going to act in a reasonable way and acknowledge the practical differences between non-drug industrial hemp and drug varieties of *Cannabis*. It is also clear that the DEA will never accommodate North Dakota's plan to

commercialize hemp farming, despite the fact that the agency could easily allow the state to regulate hemp farming on its own, just as it now does with those states which regulate medical marihuana.

The misinformation about industrial hemp is prevalent in the public policy of the DEA as well. The agency has publicly claimed that it does not have the authority to change existing federal law and that it is "law enforcement, not lawmaker." It is indeed interesting that the DEA pretends to be purely a law enforcement entity, when it is not. Like many federal agencies, the DEA has been granted broad authority by Congress to interpret the statutes in the United States Code, such as the Controlled Substances Act (CSA). This includes re-scheduling substances and promulgating detailed rules and regulations. It is obvious that the current rules are not set up for farmers to grow an agricultural crop that has no potential for use as a drug. The DEA could easily negotiate industrial hemp farming rules with North Dakota (or any state) under the Administrative Procedures Act, 5 USC § 563. Instead, the agency chooses to interfere in the legislative process by intentionally confusing legislators, reporters and the public with needless and misleading rhetoric. Under U.S. administrative law, "an agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule, if the head of the agency determines that the use of the negotiated rulemaking procedure is in the public interest" (5 USC § 563a). Nominee Leonhart has had ample opportunity to make just such a determination regarding hemp farming, but instead she has chosen to continue and escalate the DEA's war on hemp farmers and manufacturers.

The last commercial hemp crops in the U.S. were grown in Wisconsin in 1957. The primary reason that industrial hemp has not been grown in this country since then is because of its misclassification as a Schedule I drug in the CSA. The Marihuana Tax Act of 1937 had provisions for farmers to grow hemp by paying an annual occupational tax of $1.00. The exemption for hemp products was contained in the definition of marihuana in the Act:

> *"The term 'marihuana' means all parts of the plant Cannabis sativa L. ... but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination."*

The language of the exemption was carried over almost verbatim to the definition of marihuana in the CSA [21 USC § 802(16)], which superseded the 1937 Tax Act, but since there was no active hemp industry at the time, the provisions for hemp farming and processing were overlooked and not included in the new Act.

Christine A. Kolosov, in her Comment "Evaluating the Public Interest: Regulation of Industrial Hemp under the Controlled Substances Act" in the *UCLA Law Review*, notes that the DEA cannot legitimately deny or delay licenses to cultivate industrial hemp, particularly when states have adopted regulatory schemes like the one enacted in North Dakota. She goes on to argue that the DEA has failed to fulfill its obligations under 21 USC § 823(a) which explicitly states that "The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest."

The DEA's failure to consider each of the six factors required under Section 823(a), along with its failure to act within a reasonable time, leads us to the unavoidable conclusion that Michele Leonhart would not be a good Administrator of the DEA. Vote Hemp therefore opposes her nomination and urges the committee members to vote against her confirmation.

Sincerely,

Eric Steenstra
*President*

*Vote Hemp is a national, single-issue, non-profit organization dedicated to the acceptance of and a free market for industrial hemp, low-THC oilseed and fiber varieties of Cannabis, and to changes in current law to allow U.S. farmers to once again grow the crop. Our ultimate goal is to see hemp grown on a commercial scale in the U.S. in support of a large local processing and value-added infrastructure.*