Co-Chairs Ginny Burdick and Ann Lininger,

CC: Joint Committee on Implementing Measure 91

RE: Testimony regarding SB 844 and proposed amendments

My name is Jennifer Alexander. I am a resident of Beaverton in Washington County. I am a mother of four boys, ages 12, 15, 17 and 19, and I have been a cannabis advocate pursuing law reforms surrounding our marijuana laws since 2010. I am currently employed full-time performing office work that includes accounting, administration and other similar duties for a company completely unrelated to these issues and therefore, I have no financial interest in the marijuana industry. I am a consumer advocate and my advocacy work has primarily focused on the civil rights aspects of the marijuana laws. I used to be a registered OMMP patient, but was priced out of the program when the fees increased and grower fees were added and I have not been able to rejoin the program since. I'm excited about the implementation of M91, especially the July 1 operative date, as it means my use of marijuana will no longer be criminal.

I previously worked as the Campaign Manager for the Oregon Cannabis Tax Act 2012 while it was in the early stages of signature gathering, helping the campaign to obtain the first 30,000 signatures to qualify for the 2012 ballot. I have worked with a number of different cannabis advocacy groups over the last few years, particularly with efforts involving research and journalism surrounding the ongoing debate on cannabis law reform. Currently, I am the Facilities Director for Portland NORML, a recently formed NORML chapter with the intent to help bring a consumer voice back into the dialogue surrounding marijuana law reform in Oregon – a voice that seems sorely missing in many of the conversations, especially at the legislature and the proposed Rules Advisory Committee for implementing the law under M91.

I want to apologize for not introducing myself in my previous testimony, so you could know who I am and what interest I have in this topic. I also want to apologize for my lack of formality – I was writing it late at night after replaying the work session recording, hoping to ensure you received it timely and I forgot to return to the top and put the appropriate titles into the testimony. And finally, I want to thank you for allowing multiple interested parties to testify on these issues at Wednesday's work session and for posting the written testimony on OLIS so that the public can be aware of what interested parties are saying as these issues are addressed by your committee. However, I was surprised at the very short list of comments posted, as the Oregonian indicated that Senator Ginny Burdick had claimed that the committee had received over 400 emails on this topic, but there were only about 10 testimonies posted to OLIS. Is there any particular reason the remainder were not posted? My concerns remain regarding transparency associated with these actions, and I would like to encourage this committee to ensure that the actions taken regarding the implementation of M91 remain as transparent and publicly accessible as possible. In additional to allowing the public the opportunity to comment and address their concerns, even if only via written testimony, it also helps to establish an accessible public record for the future on this historic scenario that will aid other states and the federal government, when they finally overturn their prohibitions on marijuana as well.

I previously wrote to you and addressed my concerns about the residency requirement, the address-specific plant limits, and the inspections and record-keeping provisions of the dash 6 amendment. I would like to add some further commentary for the committee after hearing the work session from Wednesday and seeing Governor Kate Brown's letter submitted for Monday's work session.

On the issues at hand currently, there are three specific issues I want to address in this written testimony:

1. The role of law enforcement in enforcing marijuana regulations under M91 and OMMA
2. The residency requirement passed in the dash 6 amendment and Mark Mayer's testimony relating to this provision
3. Governor Brown's letter regarding increased inspections and record keeping under OMMA

The role of law enforcement in enforcing marijuana regulations under M91 and OMMA

I have testified at the legislature in previous hearings, most prominently when Rep. Andy Olson's omnibus bill in 2012 was proposing giving law enforcement a complete list of all medical marijuana growsite addresses. In that hearing, we demonstrated in a Powerpoint presentation with data obtained from medical marijuana database inquiries via LEDS that many law enforcement personnel were abusing their access to this confidential database, utilizing it as an investigative tool in many situations unrelated to marijuana. (I believe I still have the presentation if anyone wants to see it). It is worth noting that these abuses ran rampant in the access provided to law enforcement through their onboard computers in their cars or other means, and did not require any effort from OHA/OMMP to provide the info – it is all computerized and available 24/7.

While law enforcement can and does contact the OMMP via the phone to also acquire this information at times, we were only able to analyze the access via the computerized system. We were told that phone inquiries were contained in multiple binders that took up an entire wall and could not easily be provided for our investigation into this issue. I personally take issue with the claims Rob Bovett made to the "difficulty" law enforcement faces in acquiring this info since they are literally able to access the info with a single click of the mouse, if they so choose. As I understand the system, they can access anybody's criminal records, car registration, etc by running a LEDS check. In the LEDS system, there is an additional button found on that page that allows them to run the same information through the database to verify (when necessary and applicable) if the individual or address is a valid cardholder or growsite. The "difficulty" portrayed by Rob Bovett is not accurate at all. Even if a rural law enforcement body didn't have the onboard equipment that some of the larger cities have readily available – they have some method to access LEDS at any time (maybe by calling dispatch?), and that individual would be just as capable of clicking that button for them. This computerized 24/7 access was provided to them in 2005, if I recall correctly, and they have repeatedly abused it since then.

Further, there is no individual tracking of who is accessing the database so the only tracking available is which agency (based on the ORI number) accessed the database. I proposed in 2012 that we should require that a personal identifier be used to access the database, such as badge

number or other unique identifier, so that those who abuse their access can be identified and dealt sanctions accordingly. **I would like to propose that option again to this committee – that a unique identifier must be supplied to gain access to the confidential database and that any abuse of that access to confidential information should result in swift and severe sanctions on that individual, up to and including job termination, to deter misuse of the access granted to law enforcement.**

I met with Rep. Olson multiple times discussing these concerns at length and specifically proposing sanctions against law enforcement who misuse the database, up to and including termination of their job. These abuses of the confidential database have repeatedly put participants in the OMMP in harm's way and are specifically contrary to the law - both the OMMA and the law regarding LEDS access – but since no penalties are in place under OMMA and it appears that the only action available under LEDS is to terminate the entire department's access to LEDS for violations (since no individual can be identified, only an agency), no action has been taken for any abuse of the database to date. And the abuses are numerous and appalling.

The Washington County Sheriff went so far as to post a map in the Oregonian in 2008 that illustrated the addresses of "investigations" (not convictions) related to OMMP, admitting openly and publicly that they were "going against what the state advises". This map included patients and growers who had been targets of criminal activity (not perpetrators of crime) and cases that did not result in any criminal charges being filed; it solely served to "inform the public" about suspected problems surrounding OMMP, whether founded or not. In short, it was meant to scare the public into pushing for tighter restrictions of the OMMA (although it failed to do so). The Washington County Sheriff's office openly and publicly violated the law to influence the public policy surrounding medical marijuana.

In similar disregard for public safety and the law, Polk County openly published the specific address and information about a woman whose husband was arrested for allegedly abusing the medical marijuana program (she was not charged or implicated in the crime), and indicated that the woman was also a cardholder so they had left her with her lawful amount of marijuana and plants, after seizing her husband's excesses and all his personal firearms. They indicated that there were children in the home as well, providing anyone with criminal intent the knowledge of the vulnerability of this family and the exact amount of marijuana to be found on this property (so at least 6 mature plants and 1-1/2 pounds of usable marijuana – her lawful possession limits – possibly more if they followed the remainder of the law which allowed them only to seize the husband's excess and not all of his marijuana). Specifically, that a woman who is alone with children and no means to protect her home was the only obstacle to accessing this marijuana. After the story last week of the violent murder in SE Portland, it should seem obvious why this would be placing this family in danger. These blatant abuses of the access provided to law enforcement to perform their job horrified me, and provided the starting point to my involvement with marijuana law reform.

I spoke with many law enforcement officers who openly admitted that they would use any tools at their disposal when stopping a car for a traffic infraction or when called out to any address, including determining if the address was a growsite or if medical marijuana patients, caregivers

or growers owned the vehicle being driven in a traffic stop – and this investigative option wasn't dependent on whether or not marijuana was a factor in the traffic stop or call. **This was in direct conflict of the stated allowance granted for them to access the database, namely to <u>VERIFY</u> (emphasis mine) if the person or address was a lawful cardholder or growsite (and it specifically forbids them from using it for any other purpose).** "Verify", as I pointed out at that hearing, implies that such a claim has been previously made (ie an investigation determined that the person possessed marijuana or was cultivating marijuana, and that person stated their cardholder status as a defense to the possession that was otherwise unlawful) and that law enforcement needs to confirm the validity of the claim.

Further, it is openly admitted and noted in court records (Held v Hanlin) that a few different counties accessed the database to perform background checks on applicants for concealed handgun licenses, based on the incorrect belief that if a person was a registered cardholder, caregiver or grower with the OMMP, that federal law would prohibit them from issuing a concealed handgun license under Oregon's laws. Judge Ellen Rosenblum (now Attorney General) issued the ruling on that case clearly stating on the record that this use of the database was unlawful and that there was no federal law conflict with providing concealed handgun licenses to registered cardholders, caregivers or growers – primarily because of the way that the cardholder system works (there is no requirement that a cardholder possess, grow or use marijuana, only an exception from state and local prosecution if they choose to do so). This finding was upheld in the upper courts, at great expense to the counties participating in the lawsuits (Washington County was one of them).

The role of law enforcement should be limited to enforcing only the criminal provisions of our laws, such as DUII, cultivation on public lands, unlicensed sales outside of the regulatory regime and trafficking across state lines. These issues do not require any further involvement of law enforcement beyond their current capacity, nor does law enforcement need any clarity on these issues as suggested by Rob Bovett: their job has always been enforcing the criminal laws (not civil violations or disputes). Civil infractions, such as license violations, should be handled by the regulatory agency tasked with managing the program (namely OHA or OLCC or a new body, should one be created for this purpose). The only thing law enforcement needs to know as this is implemented is what remains illegal under the criminal laws of our state and that is currently clearly spelled out in M91 and existing law.

Further, all criminal behavior subject to law enforcement's involvement clearly falls outside the regulatory regime, therefore, law enforcement should NOT be given a list of licensed locations beyond what any member of the public has access to, and severe sanctions should be imposed for any misuse of confidential information that they are granted access to, such as the OMMP database. This should have happened years ago as the violations of the database are voluminous. **If any additional confidential information is provided to law enforcement, it should definitely include additional severe sanctions for misuse of the access and/or info.**

<u>The residency requirement passed in the dash 6 amendment and Mark Mayer's testimony relating to this provision</u>

The issue of a residency requirement as proposed by the dash 6 amendment is clearly unconstitutional and I am a bit appalled at the distortion presented by Mark Mayer to try to

validate the residency requirement as constitutional**. As Senator Ferrioli rightfully pointed out, the residency requirement was not proposed with any intent to be in compliance with the Cole Amendment, and instead was proposed as a way to protect the local industry participants from competition with out-of-state players as a direct result of lobbying by various Oregon groups involved in the industry – and the legislative record clearly reflects this intent.** I'm pretty sure that the first mention of any relationship to the Cole Amendment relating to the residency requirement was as proposed by Mark Mayer in the Wednesday work session.

Further, Mr. Mayer's arguments supporting this provision as constitutional fall far short of reality. The fundamental right that is infringed upon is the right to engage in a lawful occupation in our state (in the case of commercial license holders, whether licensed dispensaries, retail outlets, growers or processors), or the right to be exempt from criminal prosecution under state and local laws if certain requirements are met (OMMP patients and/or growers), and these rights have no reliance or bearing on the federal status of marijuana. State law will allow licensees to cultivate, process and distribute marijuana <u>within the state of Oregon only</u> and if state players can participate in this, then out-of-state players can as well. It is a direct and clear violation of the Privileges and Immunities clause (as well as other protections granted to citizens) to prohibit out-of-state players from lawfully engaging in growing, processing and distributing marijuana within the state of Oregon simply because they reside in another state. This residency requirement specifically makes it illegal and therefore criminal for out-of-state players to participate in what is otherwise a lawful activity for Oregon residents. This sort of discrepancy is at the heart of the Privileges and Immunities Clause.

Mr. Mayer attempted to introduce interstate commerce into the equation, but that ignores the very real possibility that in-state players could just as easily cross state lines as out-of-state players. **There is no state interest served by limiting participation to Oregon residents. If such a state interest exists, it exists for all players and not solely out-of-state players.**

To reiterate, it is obvious to observers, and the legislative record reflects, that this provision is protectionist for the local marijuana industry and not based on any valid state interest or conflict with federal law, and especially as it relates to noncommercial medical marijuana growers, it is discriminatory. I met a man this past weekend at the Global Cannabis March in Portland who spends a portion of the year in our state and a portion of the year in a different state, where he has residency. He is currently an OMMP participant who grows his own marijuana at his property here in Oregon. There is no valid state interest served in excluding him from the protections of the OMMA while he is in Oregon. Oregonians determined in 1998 that those who qualified under OMMA should not be subject to the criminal laws of the state of Oregon regarding marijuana – to deny out-of-state residents that same protection from criminal prosecution while they are in Oregon is absurd and undermines the intent of OMMA. It also goes contrary to the findings in State v Berringer, as Lee Berger, the attorney who represented Berringer, already pointed out to your committee.

<u>Governor Brown's letter regarding increased inspections and record keeping under OMMA</u>

Finally, I would like to address the letter written by Governor Kate Brown that suggests that increased inspections and record keeping are paramount to ensure that we, as a state, don't "run afoul of federal law." Her letter suggests that federal law has a role in the creation and/or implementation of state law and I would argue that the federal government has no role in our state legislative process whatsoever as a result of the Anti-Commandeering Doctrine. The federal government cannot require the states to implement any particular laws, particularly to prohibit marijuana cultivation, processing or sales. **The federal government CAN enforce their own laws in our state, but they cannot require that the state maintain prohibition of marijuana, enforce federal prohibition or that we regulate it in any particular fashion.**

Further, since Measure 91 and OMMA both only require licensing and oversight (aka regulation) by the state and local governments, there is nothing in either law that I am aware of that puts our government officials in danger of federal prosecution, even under such obscure means as the RICO laws as some have implied as they are not aiding or facilitating the federally illegal behavior, only regulating and enforcing state laws. They are not growing, processing, selling or otherwise dealing with federally prohibited controlled substances. While the issue is complicated, I am pretty certain that all state and local officials involved in administering and overseeing these programs would be granted immunity under federal law by nature of their regulatory and administrative positions if any of their actions in enforcing our state law were to be deemed to be in conflict with federal law, just like our law enforcement is not subject to federal prosecution when engaging in drug stings or seizures, despite being in possession of the controlled substances while performing their duties.

While the DOJ would like your committee to fear implementing this law in the "wrong" way, and cause doubts about the standing of those participating in this industry, the only people truly facing any risk are those who directly participate in the industry and these participants are well aware of their standing under federal law and have terrific lawyers to advise them and defend them if federal prosecutions occur – which personally I find to be highly unlikely. In fact, both OMMA and M91 clearly reiterate that the state law offers no protection against federal prosecutions. **However, it is also worth noting that the Rohrabacher Amendment specifically prohibits the DOJ from utilizing their limited resources to pursue prosecutions for those who are in compliance with state medical marijuana laws– without consideration for how that state law may be crafted or implemented.** Any DOJ advice or suggestion to the contrary is simply false. Especially with this current amendment that deals directly with medical marijuana, your committee and our state government has nothing to fear from "running afoul" of the federal government.

I would also like to recommend, as a matter of transparency of your committee and accountability of our federal officials, that your committee also make public any and all communications from the DOJ and other federal officials as it relates to the implementation of M91 and changes to the OMMA. There have been multiple comments made in the work sessions regarding input from the DOJ, but none of that information has been made publicly available. Since the DOJ has no direct role in state legislation, I believe that all of these recommendations and communications are subject to the same public disclosure as any other input from the public and should be noted on the public record along with all other

testimony and meeting documents. This will allow the public to be aware of the role of the DOJ as this committee implements what the Oregon voters approved.

I want to thank you again for your time in considering my perspective and position, and also inform you that I am available to testify on any of these, or other, issues or discuss these concerns further, if you would like. I can be contacted by replying to this email or by phone.

Sincerely,

Jennifer Alexander