



July 12, 2017

Key Vote NO on the Stop the Importation and Trafficking of Synthetic Analogues Act, H.R. 2851

On behalf of FreedomWorks' activist community, I urge you to contact your representative and urge him or her to vote NO on the Stop Importation and Trafficking of Synthetic Analogues Act, H.R. 2851, sponsored by Rep. John Katko (R-N.Y.). The bill would broadly expand penalties for drug offenses, concentrate power within the Department of Justice, punish people who lack criminal intent, and overcriminalize certain behavior.

The United States' opioid epidemic is a very serious concern, as lives are ruined by addiction. Rather than seeking to treat addiction through diversion and rehabilitation, the Stop Importation and Trafficking of Synthetic Analogues Act relies on harsh penalties and expansive powers given to the Attorney General under the guise of "doing something" to address this epidemic.

The Stop Importation and Trafficking of Synthetic Analogues Act amends the Controlled Substances Act to create a sixth federal schedule, "Schedule A," for synthetic opioids and allows the Attorney General to unilaterally add, temporarily and permanently, substances to this schedule. This concentration of power into an executive branch department undermines the rediscovery of Article I, under which lawmaking power is granted only to the legislative branch. We saw the executive branch overreach in the previous administration, and we do not want to see more of that under the current administration – or any administration.

The bill also rests on the belief that increased penalties will lead to a reduction in synthetic opioid use. The purportedly "tough on crime" policies that led to overincarceration in the United States have not reduced the level of drug use in the United States. In fact, after more than 40 years and more than \$1 trillion, drug use, including heroin use, is at an all-time high. This shows that increased penalties will not deter those who abuse illicit substances.

Finally, the Stop Importation and Trafficking of Synthetic Analogues Act would overcriminalize behavior. Synthetic opioids, such as fentanyl, are often added to an illicit substance before it

reaches the United States. As Chuck Rosenberg, acting head of the Drug Enforcement Administration (DEA), told the Senate Judiciary Committee in June 2016: “Illicit fentanyl, fentanyl derivatives, and their immediate precursors are often produced in China. From China, these substances are shipped through mail carriers directly to the United States or alternatively shipped directly to transnational criminal organizations (TCOs) in Mexico and the Caribbean.” Often, people don’t even know synthetic drugs are present in a substance by the time that substance reaches them in the United States.

While the Controlled Substances Act does have a criminal intent standard, or *mens rea*, the Stop Importation and Trafficking of Synthetic Analogues Act effectively makes the standard meaningless. It would allow the limitless criminalization of chemicals and substances, based solely on the whim of the attorney general. How is anyone supposed to know what chemicals and drugs are criminal under a scheme like that?

“A conviction under the Controlled Substances Act is obtained by proving that a defendant ‘knowingly or intentionally’ possessed or distributed one or more listed controlled substances,” the Heritage Foundation explained in a January 2016 report, *The Supreme Court on Mens Rea: 2008–2015*. “Listing controlled substances, however, does not solve that problem. One reason why is that innovative chemists can stay one step ahead of the law by devising new drugs that are ‘analogues’ to the ones on the controlled substances list but not identical to listed drugs. In response, Congress enacted the Controlled Substances Analogue Act. That statute seeks to prohibit any new drug that is ‘substantially similar’ to the ones listed under the Controlled Substances Act, thereby combating the work of ‘clandestine chemists.’”

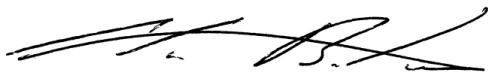
“But another problem arose. If Congress did not know precisely what substances would be illegal under the Analogue Act, how could anyone else have that knowledge? Congress’s answer was to require that ‘a controlled substance analogue’ be ‘intended for human consumption.’ In other words, the Analogue Act applies to substances (1) that are biochemically similar to listed drugs and (2) that a person knowingly manufactured, possessed, or distributed for ‘human consumption.’ Yet that formulation of the government’s proof could offer little to no protection for parties who possess an analogue drug without knowing its true nature. For example, is the unlisted drug 3,4-methylenedioxy-N-butylamphetamine substantially similar to the listed drug Methamphetamine, 3,4-methylenedioxyamphetamine (MDA)? Guess wrongly, and you could spend the rest of your life in prison,” the report added.

Over the past ten years, conservative states – including Georgia, Oklahoma, South Carolina, and Texas – have taken a new approach to address the serious problems with drug addiction. Through sentencing reforms, accountability courts, in-prison rehabilitative programming, and reentry reforms, these states have saved taxpayers money, reduced recidivism, and enhanced public safety. Unfortunately, Congress has failed to learn from these laboratories of policy

innovation. The Stop Importation and Trafficking of Synthetic Analogues Act continues these policy failures.

FreedomWorks will count the votes for the Stop Importation and Trafficking of Synthetic Analogues Act, H.R. 2851, when calculating our Scorecard for 2017 and reserves the right to score related votes. The scorecard is used to determine eligibility for the FreedomFighter Award, which recognizes Members of the House and Senate who consistently vote to support economic freedom and individual liberty.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Brandon', with a stylized, flowing script.

Adam Brandon
President, FreedomWorks