

CONGRESSIONAL CANNABIS INSIGHTS

by  Catuli
CONSULTING



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Legislative Analysis

H.R. 493 - Correa, J. Luis [D-CA-46] – As Introduced 01/11/2019

Note: much of existing federal law uses “marihuana” and “marijuana” interchangeably. Catuli Consulting utilizes the term “cannabis” except when quoting or making direct references.

SHORT TITLE: Sensible Enforcement of Cannabis Act of 2019

COSPONSORS: Representatives: Cohen, Steve [D-TN-9], Young, Don [R-AK-At Large], Titus, Dina [D-NV-1], Gaetz, Matt [R-FL-1], Norton, Eleanor Holmes [D-DC-At Large], Carbajal, Salud O. [D-CA-24], DeFazio, Peter A. [D-OR-4], Hill, Katie [D-CA-25], Schakowsky, Janice D. [D-IL-9]

COMMITTEES: House - Judiciary

SUMMARY: To direct the Attorney General, in enforcing the provisions of the Controlled Substances Act relating to marijuana, to focus on certain enforcement priorities. Explicitly prohibits the prosecution for any conduct concerning medicinal or recreational use in a state that has authorized such activity.

EXISTING LAW:

- 1) Defines “marihuana” as all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Exempts hemp. (21 United States Code (U.S.C.) § 802(16))
- 2) Sets “marihuana” as a Schedule I controlled substance. (21 U.S.C. § 812(c)(10))
- 3) Sets minimum sentencing requirements for marihuana possession with intent to distribute or manufacture. (21 U.S.C. § 841)

THIS BILL:

- 1) Prohibits the Attorney General of the United States from prosecuting any conduct that has been authorized by the laws of a state concerning medicinal or recreational cannabis
- 2) Includes exceptions for preventing:
 - a) Distribution to minors
 - b) Revenue from marijuana going to criminal enterprises, gangs, or cartels



- c) Diversion of marijuana from a legal State to another State without legalized marijuana
- d) State authorized marijuana activity being used as a cover for other illegal activity
- e) Violence and the use of firearms in cultivation or distribution of marijuana
- f) Drugged driving and other adverse public health consequences
- g) Growing of marijuana on public lands
- h) Marijuana possession or use on Federal property

COMMENTS:

Sponsor Profile. *Representative J. Luis Correa, Democrat, California 41st.* Congressman Correa has represented Orange County, California in the United States House of Representatives since January 3, 2017. For the 116th Congress Mr. Correa has been assigned to the House Judiciary Committee and the House Committee on Homeland Security, serving as the Chairman of its Subcommittee on Transportation and Maritime Security. Mr. Correa previously served in the California State Assembly from 1998 to 2004 and the California State Senate from 2006 to 2014. Between his time in the Assembly and Senate, Mr. Correa served on the Orange County Board of Supervisors. He has been an active participant on cannabis issues in the past and is a member of the Cannabis Caucus. He is currently a resident of Santa Ana, CA.

Purpose. According to the sponsor, Rep. J. Luis Correa [D-CA-46] “In my state of California, voters want legal cannabis. It boosts our economy and is a strong medical tool. By 2020, revenues from cannabis sales taxes could reach \$1 billion annually for California. This bill will protect California and other states from federal overreach and ensure the will of the American voter is respected.”

Background.

Federal Controlled Substances Act. Under current federal law, it is unlawful for any person to manufacture, distribute, dispense, or possess a Schedule I controlled substance, including cannabis. Schedule I drugs are defined as “drugs with no currently accepted medical use and a high potential for abuse.”

USDOJ Guidance Regarding Cannabis Enforcement. On August 29, 2013, USDOJ issued a memorandum, known commonly as the “Cole Memo,” which updated its guidance to all United States Attorneys (USAs) in light of state ballot initiatives providing for the regulation of cannabis production, processing, and sale. While the memorandum notes that illegal distribution and sale of cannabis is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels, it also states that the USDOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats, which include the prevention of: (1) distribution to minors; (2) revenue from cannabis from going to criminal enterprises; (3) diversion to other states where cannabis is not legal under state law; (4) state-authorized cannabis from being a cover for trafficking in other illegal drugs or illegal activity; (5) violence in cultivating and distributing cannabis; (6) drugged driving and other public health problems from cannabis use; and, (7) growing, possessing, or using cannabis on public lands or on federal property.

The Cole Memo reads:



In jurisdictions that have enacted laws legalizing cannabis in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of cannabis, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.

On January 4, 2018, then-U.S. Attorney General Jeff Sessions issued a memorandum to all USAs that rescinded any previous guidance or memos providing for leniency or discretion around cannabis activity in states that had legalized adult use cannabis, including the Cole Memo. The actions of Attorney General Sessions called for a “return to the rule of law,” reminding USAs that cannabis remains illegal on the federal level. The Sessions Memo directs prosecutors to “weigh all relevant considerations of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community,” but stops short of calling for more prosecutions.

Previous Congressional Action. In December 2014, Congress passed, as part of an omnibus budget bill, language that prohibits the USDOJ from spending funds to intercede in state efforts to implement medical cannabis. This amendment, known as the Rohrabacher-Farr amendment, must be renewed annually in order to continue to constrain federal funding in this way. Since its inclusion in 2014 the Rohrabacher-Farr amendment has been included as part of Continuing Resolution funding bills though its inclusion is not required.

The Sensible Enforcement of Cannabis Act. According to its sponsors, HR 493 is based on the desire to formally include the provisions of the Cole Memo in federal law and the bill utilizes the same guidance language and exceptions from the original memo. The major difference between the passage of legislation and the reinstatement of a guidance memo to USAs is that the policy would not be in limbo with a shift in Attorney General or presidential administration as any change would require an amendment to law.

Current Related Legislation. H.R. 712, CA Medicinal Cannabis Research Act of 2019, Rep. Correa, J. Luis. (Introduced 01/23/2019)

Prior Related Legislation. H.R. 5050, Sensible Enforcement of Cannabis Act of 2018, Rep. Correa, J. Luis (Introduced 02/15/2018)

ISSUE(S) FOR CONSIDERATION:

The Cole Memo provided a measure of certainty to cannabis businesses in states with legalized activity and its rescission in 2018 by AG Sessions caused tremendous uncertainty about possible enforcement action. However, since the legislative process tends to be slow there may be other more expeditious efforts that can be undertaken while this bill is under consideration. This may include efforts to influence the current attorney general to reinstate the memo or pursuing members of congress to do the same. With a Republican majority in the Senate it is unlikely that HR 493 will pass into law and these efforts may be more immediately impactful.



SUPPORT:

National Organization for the Reform of Marijuana Laws (NORML)
National Cannabis Industry Association (NCIA)

OPPOSITION:

None on file