

Written Testimony of Washington Governor Jay Inslee and Washington Attorney General Bob Ferguson

Senate Judiciary Committee Hearing on Conflicts Between State and Federal Marijuana Laws September 10, 2013

Thank you Chairman Leahy, Ranking Member Grassley, and members of the Senate Judiciary Committee for holding a hearing on this important topic and for allowing us to submit written testimony. We write to update the Committee on developments in our state, to thank President Obama and Attorney General Holder for clarifying federal enforcement priorities, and to highlight for the Committee areas where we could benefit from further federal guidance or potential changes in federal law.

Since the voters of Washington approved Initiative 502 last November, authorizing the creation of a highly regulated market for marijuana, we have been working diligently to respect the will of the voters and implement the measure. Washington's Liquor Control Board has spent months developing detailed rules and regulations to implement Initiative 502, through an extensive process of public testimony and deliberation, and will soon adopt final rules and begin issuing licenses to qualified marijuana producers, processors, and retailers.

In light of our voters' choice and the extensive work we have done to implement that choice, we welcomed the recent announcement from the Department of Justice that it will not act to challenge our state's law. We appreciate the leadership that President Obama and Attorney General Holder have shown in carefully considering this issue and ultimately concluding that the federal government should allow Washington and Colorado to implement our states' laws and serve as the laboratories of democracy on this issue (in Justice Brandeis's famous words), while continuing to enforce federal law in the areas of highest priority for the federal government.

We look forward to working with the Department of Justice and other federal agencies to ensure that our state's effort complies with and advances federal priorities. Specifically, Deputy Attorney General James Cole listed eight enforcement priorities in his recent memorandum to United States Attorneys. Initiative 502 and the proposed rules to implement it developed by the Liquor Control Board address each of these issues in important ways. We address each of the priority areas in turn:

(1) "Preventing the distribution of marijuana to minors;"

-Initiative 502 allows marijuana sales only to adults age 21 and older. RCW 69.50.354.

-No retailer, processor, or grower can be located within 1,000 feet of a school, park, playground, recreation center, child care center, transit center, video arcade, or library. RCW 69.50.331(8); proposed WAC 314-55-010 (definitions).

-The Liquor Control Board's proposed rules restrict advertising that could reach minors. RCW 69.50.345(9)(b); proposed WAC 314-55-155.

-No one under 21 can enter a licensed marijuana retailer, obtain a license under Initiative 502, or be an employee of a licensee. RCW 69.50.357(2); RCW 69.50.331(1)(a); proposed WAC 314-55-015(2).

-The Board's proposed rules require specific child resistant packaging for marijuana and marijuana-infused products in solid or liquid forms. Proposed WAC 314-55-105.

-Marijuana possession by those under 21 remains illegal under state law. RCW 69.50.4013.

(2) "Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;"

-The Liquor Control Board's proposed rules require criminal background checks of any person or member of any business entity (and their spouses and financiers) seeking a license to sell, grow, or process marijuana. Licenses can be denied or revoked for criminal violations. Proposed WAC 314-55-020; 314-55-035; 314-55-040.

-To obtain a license, business entities must be formed under the laws of the state of Washington, and all individual members of business entities must have resided in the State for at least three months before applying for a license. RCW 60.50.331(1)(b) and (c); proposed WAC 314-55-020(7).

-The Liquor Control Board will inspect licensed premises and their books to ensure that they are not acting as covers for other activities. Proposed WAC 314-55-087.

(3) "Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;"

-Initiative 502 and the Liquor Control Board's proposed rules require careful tracking of marijuana by producers, processors, and retailers. All licensees must track marijuana "from seed to sale" using a software system specified by the Board, and must notify the Board in advance of all shipments and waste disposal. Proposed WAC 314-55-083(4); 314-55-085; 314-55-097.

-The Board also capped the total amount of marijuana that may be grown statewide and the total number of retail stores, attempting to limit the marijuana supply to only what will be demanded in Washington. Proposed WAC 314-55-075(6); 314-55-081.

-Limits are placed on the amount of marijuana that each licensee may have on hand. Proposed WAC 314-55-075(9); 314-55-077(7); 314-55-079(7).

-Purchase and possession of marijuana by individuals is limited to specified quantities. RCW 69.50.360(3); 69.50.4013(3).

-Internet sales and delivery are prohibited. Proposed WAC 314-55-079(3).

-Marijuana packaging must have labels warning that: "This product is unlawful outside of Washington state." Proposed WAC 314-55-105(13)(f).

- (4) “Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;”
- The Liquor Control Board will not license any location where law enforcement access is limited. This includes personal residences. Proposed WAC 314-55-015(5).
 - All licensees must maintain surveillance systems with continuous recording twenty-four hours a day, subject to inspection by the Board. Proposed WAC 314-55-083(3).
 - The Board will inspect licensed premises and their books to ensure that they are not acting as covers for other activities. Proposed WAC 314-55-087.
- (5) “Preventing violence and the use of firearms in the cultivation and distribution of marijuana;”
- In addition to the required background checks mentioned above, the Liquor Control Board’s proposed rules require licensed producers, retailers, and processors to have detailed plans for security and transportation of their products, and all licensees must have alarm and surveillance systems. Proposed WAC 314-55-083.
- (6) “Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;”
- Impaired driving is illegal under state law, and Initiative 502 set a new “per se” blood THC limit for a conviction of driving under the influence of marijuana. RCW 46.20.308.
 - Any marijuana advertisement must disclose the drug’s potential health consequences and contain a warning not to operate a vehicle under the influence. Marijuana packaging must have labeling that discloses potential health risks, a warning not to operate a vehicle, and include accompanying material with other health warnings and information. Proposed WAC 314-55-155; 314-55-105.
 - Licensed producers of marijuana must submit representative samples of their product to a licensed testing laboratory for inspection and testing to assure compliance with standards set by the LCB. If a representative sample fails to meet those standards, the entire lot from which it was taken must be destroyed. RCW 69.50.348; *see* proposed WAC 314-55-102 (quality assurance testing standards).
 - Limits are placed on the amount of active ingredient in a single serving of an infused product and the number of servings in any single unit of a product for sale. Proposed WAC 314-55-095.
- (7) “Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and”
- Outdoor production of marijuana is tightly regulated under the proposed rules and can only take place behind fences at least 8 feet tall and with security and surveillance systems. Proposed WAC 314-55-075.

(8) “Preventing marijuana possession or use on federal property.”

-The LCB will not approve any marijuana license for a location on federal lands.
Proposed WAC 314-55-015(6).

As you can see, we have taken many steps to address the federal government’s enforcement priorities, and we are confident that we can partner with the federal government in enforcing the law as to those who act outside the bounds of both Initiative 502 and federal law.

At the same time, certain aspects of federal law are making it difficult for entrepreneurs seeking to enter the regulated marijuana market and comply with Initiative 502. Most importantly, business owners attempting to comply with Initiative 502 are having great difficulty accessing banking services, because federal law can impose regulatory and criminal penalties on banks that accept money they know to be proceeds from drug sales, even if those sales are legal under state law.

This situation unfortunately undermines federal priorities, because it means that legitimate business owners acting in full compliance with state law may still need to operate on an all-cash basis. This will make it more difficult for the State to audit their books, track their income, and differentiate those acting within the law from those possibly using proceeds from regulated marijuana sales to fund illegal activities. We are additionally concerned that by operating on an all-cash basis, licensees may become a target for theft and burglary, thereby creating additional public safety challenges. We encourage the Department of Justice to provide federal banking regulators further guidance in this area. We would also ask you to consider legislation such as H.R.2652—the Marijuana Businesses Access to Banking Act of 2013, which would allow banks to accept deposits from legitimate marijuana businesses acting in compliance with state law.

We would like to again thank President Obama and Attorney General Holder for their leadership, and for allowing us to move forward with implementation of Initiative 502 in Washington state, in accordance with the will of our voters.

We appreciate the Committee’s interest in this issue, the opportunity to update you on our State’s progress implementing Initiative 502, and the chance to highlight areas where we could use additional federal assistance to ensure that we best achieve our shared goals of keeping drugs out of the hands of children, preventing drug money from fueling criminal gangs, and preventing the violence that can be associated with the illegal drug trade.