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WASC POLICY BRIEF

Medical Marijuana Protections to be Decided after Midterm Elections

As Congress scrambles to fund the government and avoid another shutdown, a little-known federal provision could make or break the medical marijuana industry.

Overview

Current federal law, known as the Rohrabacher-Blumenauer Amendment, prohibits the Department of Justice (DOJ) from using federal funds to prevent states with medical marijuana regulations from implementing laws that authorize the use, distribution, possession, or cultivation of medical cannabis. The amendment applies to medical marijuana but not recreational cannabis, and does not change the designation of marijuana as a Schedule I controlled substance under the Controlled Substances Act (CSA).

First passed in 2014, Rohrabacher-Blumenauer has been renewed each year as an amendment to the Departments of Commerce, Justice, Science, and Related Agencies (CJS) appropriations bill. It was most recently renewed in March 2018 as part of the Consolidated Appropriations Act of 2018, which is currently set to expire on September 30, 2018.

Though appropriators in the House and Senate included Rohrabacher-Blumenauer in their CJS funding bills, neither chamber has scheduled a floor vote on their respective bills. To avoid a partial shutdown, Congress will need to pass a continuing resolution (CR) by September 30 to temporarily extend current policies and funding levels. The CR, which we expect to include Rohrabacher-Blumenauer, will likely extend funding until after the midterm elections.



Background

As of September 2018, the use of marijuana for medical purposes is legal in 31 states, the District of Columbia, and the U.S. territories of Guam and Puerto Rico. An additional 15 states have passed more restrictive laws allowing access to low-THC products containing cannabidiol (CBD), a non-psychoactive component of cannabis.

At the federal level, marijuana remains a prohibited substance under the federal Controlled Substances Act (CSA), which was passed as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Under the CSA, marijuana is classified as a Schedule I drug (along with heroin, LSD, and ecstasy, among others), determined to have a high potential for abuse and no accepted medical use.

Despite this broadly worded statute, under the Obama administration, a number of guidance memos were distributed throughout the Department of Justice that relaxed federal enforcement of restrictions on medical and recreational marijuana. These memos culminated in 2013 with the "Cole Memorandum," authored by Deputy Attorney General James Cole. The memo directed a more hands-off approach in "jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of marijuana."

For nearly five years, the Cole Memo largely relegated marijuana control and enforcement to the states. Then, on Jan. 4, 2018, Attorney General Jeff Sessions issued a Marijuana Enforcement Memorandum rescinding the Cole Memo and the guidance memos related to it. Specifically, the Sessions memo directs U.S. Attorneys to "weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community." The Sessions memo reverses nearly a decade of Obama-era marijuana policy and



signals the federal government's intention to crack down on state-legalized recreational marijuana and could even have implications for state-regulated medicinal marijuana programs.

However, since 2014, Congress has prohibited federal authorities from taking legal action against businesses and individuals participating in state-run medical marijuana programs. This prohibition, stipulated in a budgetary provision known as the *Rohrabacher-Blumenauer Amendment* (formerly known as the Rohrabacher-Farr Amendment), expressly forbids the DOJ from using any funds whatsoever to interfere with state-run medical marijuana programs.

First introduced in 2001, Rohrabacher-Blumenauer finally became law in May 2014 after six previously failed attempts. The passage of the amendment was the first time either chamber of Congress had voted to protect medical marijuana patients, receiving bipartisan support in both the House and the Senate. It has been continuously adopted since 2014 – most recently in March 2018, when Congress approved the most recent federal funding bill. The amendment is set to expire on September 30 at the end of the FY 2018 federal fiscal year.

Current Outlook

On May 17, 2018, the House Appropriations Committee approved inclusion of the Rohrabacher-Blumenauer amendment in the Commerce, Justice, Science, and Related Agencies (CJS) appropriations bill for fiscal year 2019 (H.R. 5952), in a voice vote led by sponsor Rep. David Joyce (R-OH). The Senate Appropriations Committee followed suit on June 12 by approving their own CJS appropriations bill (S. 3072) with the amendment included.

The inclusion of the amendment as part of the base CJS appropriations bill in both chambers is particularly noteworthy, as this is the first time since its original enactment that the Rohrabacher-Blumenauer Amendment was included in either chambers' base CJS appropriations bill.



Previously, the measure had been passed via floor amendment or as part of conference negotiations.

The amendment's inclusion in the base House CJS package also shields it from consideration by the House Rules Committee, where committee chairman Pete Sessions (R-TX; no relation to the attorney general) has a history of blocking marijuana-related legislation. In September of last year, Sessions blocked Rohrabacher-Blumenauer from floor consideration; it was only saved by its inclusion in the emergency aid package passed in the wake of Hurricane Harvey. As recently as June of this year, Sessions was able to block four additional marijuana bills, three of which were intended to increase veterans' access to medical marijuana.

By including Rohrabacher-Blumenauer in the House Appropriations Committee's base funding bill, the bill's sponsors are able to bypass Pete Sessions' committee and bring it to the House floor. There are no such procedural obstacles in the Senate. Its inclusion also signals broad bipartisan support for the measure, and virtually assures its passage as part of the final government funding package.

Funding Bill Stalls; CR Likely

While there is bipartisan agreement in both chambers' appropriations committees on the medical marijuana protections, the CJS package as a whole has stalled due to disagreements between the House and Senate on a number of unrelated issues. The fate of the CJS spending bill is currently in question, and neither chamber has held a floor vote on their version of the bill. With only a handful of congressional working days left before the end of the month, and with Hurricane Florence threatening to slow things down in Washington even further, it is likely that the DOJ will be running on stopgap funding for at least a few months.



The good news for supporters of the amendment is that recent history bodes well for its inclusion in a CJS stopgap bill. Rohrabacher-Blumenauer has been included in a number of short-term spending bills in recent years, and this trend is likely to continue. With unprecedented, bipartisan support for the Rohrabacher-Blumenauer Amendment in both chambers, it is more likely than ever that an extension of the DOJ prohibition will be included in a CJS continuing resolution before the end of the month. Its inclusion in a subsequent longer-term funding bill is a virtual certainty.
