



**To:** RCRC Board of Directors  
**From:** Paul A. Smith, Vice President Governmental Affairs  
**Date:** June 12, 2017  
**Re:** H.R. 975 (Rohrabacher) – “Respect State Marijuana Laws Act of 2017” –  
**ACTION**

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### **Summary**

This memo provides an overview on H.R. 975, the “Respect State Marijuana Laws Act of 2017.” H.R. 975 provides for a new rule regarding the application of the Controlled Substances Act, and RCRC staff recommends the Board of Directors adopt a “Support” position.

### **Background**

Under the Controlled Substances Act, it is a violation of federal law to possess, use, cultivate, and/or distribute cannabis. The Controlled Substances Act is enforced by federal law enforcement agents, and prosecutions are made in federal courts by the U.S. Department of Justice (DOJ). Under the Obama Administration, the DOJ issued a series of memorandums to U.S. Attorneys regarding the use of federal enforcement resources in states that have enacted "laws legalizing cannabis in some form."

In the recent enactment of efforts to fund the 2017 Federal Budget, a key section of federal cannabis policy was continued (commonly known as the “Rohrabacher Amendment” after Representative Dana Rohrabacher (R-Orange County)). It reads:

None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

In 1996, California voters approved Proposition 215 - the Compassionate Use Act – which exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana. In conjunction with Proposition 215, in 2003 the Legislature approved Senate Bill 420 (Vasconcellos) to further implement the state’s medical marijuana laws, guidelines, and practices.

In 2015, the Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA) to implement a regulatory structure for the commercial cannabis market. And, in 2016, California voters approved Proposition 64 - the Adult Use of Marijuana Act (AUMA) –which legalizes and regulates adult cannabis use (beyond medicinal activities). Both regulatory schemes are in process of being implemented in order to meet deadlines for licensing that commence on January 1, 2018.

In 2013, the RCRC Board of Directors adopted Policy Principles regarding medical cannabis, including principles that rural counties need under a statewide regulatory scheme. Key aspects of these principles include:

- Local control in determining whether a jurisdiction can allow commercial activities;
- Explicit county taxing authority;
- Addressing environmental degradation; and,
- Ensuring there is a strict licensing scheme, ending the “collective model.”

### **Issue**

In recent years, the federal government has liberalized its policy with respect to cannabis. Obama Administration memos (which have not been expressly disavowed or repealed by the new Administration) make enforcement of cannabis laws a low priority for federal authorities in states that have a regulatory schemes that address several key points as provided by the federal Department of Justice. Furthermore, the Rohrabacher amendment all but prohibits the federal government from enforcing cannabis laws against participants in states that have robust medical cannabis regulatory structures. Nevertheless, cannabis – as a general manner – remains illegal under federal law.

To date, the Trump Administration has issued little guidance on cannabis policy and/or how it will enforce the Controlled Substances Act. Notwithstanding the Rohrabacher Amendment, the current DOJ could easily reverse Obama Administration policies and practices and commence activities to eradicate cannabis, namely against the adult use markets as found in Colorado, Washington, Oregon, and states like California where adult use will soon occur (or in medical cannabis states, should the Rohrabacher Amendment expire). If this scenario were to materialize, it could leave a number of RCRC member counties in a very difficult position as these counties have begun local licensing schemes (many under the approval of local voters) as the State of California has sanctioned a variety of cannabis activities.

To address these concerns, Representative Rohrabacher has authored H.R. 975 – the “Respect State Marijuana Laws Act of 2017” – to amend the Controlled Substances Act

to permit cannabis activities in states that have enacted statutes pertaining to cannabis activities. This measure would also impact financial institutions (since funds derived from legal cannabis business would no longer be the proceeds of federally illegal conduct). However, the full ramifications of that impact across the range of banking statutes and regulations are not entirely clear at this time.

It should be noted that passage of H.R. 975 could have one collateral consequence: Under Proposition 64 (AUMA), local agencies' authority to completely ban outdoor cannabis cultivation (of six plants or less) becomes inoperative "upon a determination by the California Attorney General that nonmedical use of cannabis is lawful in the State of California under federal law." The changes to federal law made by H.R. 975 would likely trigger this provision. However, local agencies would retain the authority to reasonably regulate outdoor cannabis cultivation, and to continue to ban any cultivation (indoor or outdoor) of more than six plants, or for commercial purposes.

### **Staff Recommendation**

RCRC staff recommends the RCRC Board of Directors adopt a "Support" position on H.R. 975. Given that California voters have approved both Proposition 215, and more recently, Proposition 64, as well as the enactment of the MCRSA, much state and county resources have been utilized to construct regulatory structures. H.R. 975 would remove the threat of dramatic federal policy changes in states that have enacted cannabis laws that permit production, possession, distribution, dispensation, administration and delivery of cannabis.

### **Attachment**

- Copy of H.R. 975 (Rohrabacher)
- Congressional Record on Federal Marijuana Policy