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California Pot Initiative: Don't Forget About Federal Law

Nobody is going to be paying state taxes on marijuana when doing so would be confession to a federal felony.

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As former administrators of the U.S. Drug Enforcement Administration, we believe that Proposition 19 to legalize marijuana in California is a grave misstep. The ballot measure is being promoted by legalization lobbyists on the grounds that taxes raised from the sale of the drug will help the state with its financial crises. This simply isn't true.

That's because if passed by voters in November, Proposition 19—also known as the Regulate, Control and Tax Cannabis Act of 2010—will be in direct conflict with the Controlled Substances Act (CSA), a federal law that makes the production and sale of marijuana a federal crime. In our federal system, a state law that conflicts with a federal law violates the Supremacy Clause of the U.S. Constitution and is void.

The CSA itself clearly states that federal law overrides state law when there is a positive conflict between the two jurisdictions. Thus there is very little likelihood that anyone is going to be paying sales taxes to the state of California or its municipalities when to do so would be admitting the commission of a federal felony.

The California proposition is not a close call. It will be in explicit conflict with established federal law. It will also violate our government's treaty obligations with other countries.

It's also noteworthy that President Obama's 2010 National Drug Control Strategy unequivocally opposes the legalization of marijuana:

"Keeping drugs illegal reduces their availability and lessens willingness to use them. This Administration firmly opposes the legalization of marijuana or any other illicit drug. Legalizing drugs would increase accessibility and encourage promotion and acceptance of use. Diagnostic, laboratory, clinical and epidemiological studies clearly indicate that marijuana use is associated with dependence, respiratory and mental illness, poor motor performance, and cognitive impairment, among other negative effects, and legalization would only exacerbate these problems."

Given the clarity of President Obama's position, it would help if the Department of Justice made it clear that if Proposition 19 passes it will violate federal law and the Constitution's Supremacy Clause.

The Department of Justice acted quickly to assert the Constitution's Supremacy Clause in its recent

suit to declare null and void certain provisions of Arizona's immigration bill. It should act just as swiftly in order to prevent Proposition 19 from becoming law. While the California ballot initiative has not yet been approved by the voters, as was the case in Arizona, it would be in the public interest to make voters aware of its implications and where the Justice Department would stand if the initiative passes.

We have urged Attorney General Eric Holder to speak out on this issue. If Mr. Holder and his department remain silent, it will send an unfortunate message to the public and to our law-enforcement counterparts overseas and in this country. The Justice Department's continued silence also indicates a willingness to ignore the policy set out by the president in his National Drug Control Strategy.

Each of us, upon becoming administrators of the Drug Enforcement Administration, took an oath of office to uphold and defend the Constitution. While we may no longer be in public service, our personal commitment to this goal and to the responsibility to uphold the law remains undiminished. It is in this spirit that we call on the Department of Justice to provide a legal position on California's ballot initiative—and to do so in advance of the November election.

The writers served as administrators of the United States Drug Enforcement Administration from its inception in July 1973 through November 2007.

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