

Marijuana Series: Members of Congress Busy Writing Letters About Marijuana

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Author: [Brian P. Sharkey](#)

The January 4, 2018, decision of Attorney General Sessions to rescind the Obama-era Cole Memo, which had provided guidance to federal prosecutors about marijuana enforcement priorities, has led to various responses from elected officials at the federal and State level. In our last update, we discussed how the Attorney General and Senator Gardner, who represents Colorado, are in dispute over a hold that Senator Gardner has put on nominees for the Department of Justice ("DOJ"). Today, we will focus on several letters that Congressional members have authored about the Attorney General's decision, including a request that Congress include language protecting State marijuana laws in the federal spending bill, as well as what a Republican member of Congress recently said about his conversations with President Trump on this issue.

On February 12, 2018, eighteen Senators wrote a letter to Senator Cochran and Senator Leahy, the Chairman and Vice Chairman of the Senate Committee on Appropriations, respectively. Of the eighteen Senators, there were three Republicans, including Senator Gardner, and fifteen Democrats, including both of New Jersey's Senators, Senator Booker and Senator Menendez. The letter begins by stating that "[a]s you work to finalize fiscal year 2018 appropriations, we respectfully request that the Committee continue to respect states' laws regarding the regulation of marijuana."

After reviewing the development of marijuana laws at the State level, the authors noted that the DOJ had issued a series of guidance memoranda over several years that identified law enforcement priorities in this area while at the same time respecting State marijuana laws. The authors commented that "our citizens have relied on this agreed federal-state framework to establish legitimate businesses that bring needed medical relief and help shut down dangerous black market activity." The Senators then pivoted to Attorney General Sessions' decision to rescind the Cole Memo, as they asserted that he had, "without forewarning or an opportunity for legislative action, rescinded years of guidance, creating disruption, confusion, and uncertainty throughout the country. Citizens who have been acting in good faith based on federal and state assurances now feel exposed. This disruption may deny medications to the sick, push individuals back into illicit markets, and nullify the previously-effective regulations – all while threatening the democratically-expressed will of the states."

Due to their views about the negative consequences caused by the Attorney General's decision, the authors expressed their "hope that the fiscal year 2018 appropriations will alleviate the turbulence the Attorney General's abrupt decision has caused and that the appropriations will help preserve the strong regulatory frameworks the states have created. Doing so will provide the opportunity to pursue federal legislation that protects the legitimate federal interests at stake and respects the will of the states – both those that have liberalized their marijuana laws and those that have not. We ask that the Appropriations Committee work with us to craft the precise language that will preserve state laws regarding marijuana regulation until we can establish a longer-term framework."

While those Senators are endeavoring to protect State marijuana laws through the appropriations process, *VICE News* recently reported that eleven Democratic members of the House Judiciary Committee wrote a letter to Representative Bob Goodlatte, the Chair of the Committee, requesting that there be a hearing by the full Committee concerning the Attorney General's decision. (It should be noted that there are seventeen Democrats on the Committee.)

According to the letter that *VICE News* obtained, in requesting the Committee hearing and discussing Attorney General Sessions' decision, the eleven Democrats stated that "[w]e fear that the elimination of the Obama Administration's

marijuana enforcement guidance will promote an inefficient use of limited taxpayer resources and subvert the will of voters who have clearly indicated a preference for legalized marijuana in their states." Moreover, the authors argued that Attorney General Sessions "fail[ed] to provide any evidence that prosecuting marijuana in states where it has been legalized will make Americans safer." The Democrats suggested that the DOJ "should instead pursue enforcement strategies that are sensible, effective, and enhance public safety, and the Judiciary Committee should be included in these discussions." In concluding their letter to Representative Goodlatte, the authors stressed that it was important that they be afforded "an opportunity to ask questions about this recent rescission in a formal setting and evaluate potential legislation related to marijuana."

In one of our previous updates, we described how fifty-four members of Congress jointly wrote to President Trump on January 25, 2018, and requested that he urge the Attorney General to reinstate the Cole Memo. One of the authors of that letter was Representative Matt Gaetz, a Republican from Florida. A recent article in the *Pensacola News Journal* detailed Representative Gaetz's efforts to relax the federal government's restrictions on medical marijuana research. In addition to outlining the key components of Representative Gaetz's plans, the article noted that the Representative had spoken with President Trump about medical marijuana. Specifically, Representative Gaetz stated that "I speak with President Trump regularly[.] Not every member of Congress does, and I've talked to the president about medical marijuana, and I think that being able to have a direct line of communication to the president of the United States only helps all of Northwest Florida amplify our position."

Lastly, in another marijuana legislation development, *Business Insider* recently reported about a letter that Senator Thom Tillis, a Republican from North Carolina who is on the Senate Judiciary Committee, wrote in a response to a constituent letter he received that advocated for federal legalization of marijuana. In his responding letter, Senator Tillis explained that the issue of marijuana legalization would likely be discussed in the current session of Congress. A spokesman for Senator Tillis clarified to *Business Insider* that the Senator was referring to a general discussion of the issue rather than a specific floor action. Nonetheless, in view of the fact that there are many bills pending in Congress concerning marijuana -- with names like, for example, Regulate Marijuana Like Alcohol Act (S.776), Respect State Marijuana Laws Act of 2017 (H.R. 975), and Marijuana Justice Act of 2017 (S.1689) -- as well as the fact that the Attorney General's decision has sparked a significant response from a bipartisan group of elected officials, it would not be surprising if there is further legislative activity concerning marijuana at the federal level.