Marijuana Series: Senator Gardner Ends Absolute Hold on Department of Justice Nominees

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Last week, we wrote about the fact that Senator Cory Gardner, a Republican from Colorado, had put a hold on Department of Justice ("DOJ") nominees in response to Attorney General Sessions' decision to rescind the Cole Memo in an article titled, *Marijuana Series Part 2: Reaction of US Attorneys to Rescission of Cole Memo*. Senator Gardner's action not only held up DOJ nominees from being confirmed by the Senate, it also provoked a critical response from the Attorney General in a speech last week.

Shortly after we published our article, Senator Gardner changed his position, as he issued a press release on February 15, 2018, titled, "Gardner Lifts Certain DOJ Holds as Positive Conversations Continue on Protecting Colorado's States' Rights[.]" In that press release, Senator Gardner explained that he had lifted holds on specific DOJ nominees as a "show of good faith" due to positive conversations he had with DOJ leadership, including Deputy Assistant Attorney General Rod Rosenstein.

Specifically, Senator Gardner commented that,

"[s]ince the Department of Justice rescinded the Cole memo, I have been working with the Department's leadership, including Deputy Assistant Attorney General Rod Rosenstein and the Acting United States Attorney for Colorado on a path forward that respects states' rights and clarifies the DOJ's priorities regarding marijuana enforcement[.] Because we have had positive conversations, I have decided to lift my holds on the Assistant Attorney General for National Security, United States Attorneys, and United States Marshals as an act of good faith. My holds on all other DOJ nominees will remain in place as discussions continue." Despite his change, Senator Gardner declared: "[l]et me be crystal clear: so long as the federal enforcement priorities detailed in the 2013 Cole Memorandum are adequately protected, the DOJ should respect the will of the states who have spoken overwhelmingly on this issue. I will view the DOJ's failure to do so as a direct contradiction of our positive conversations and will take action accordingly. While I have decided to lift my holds on these specific nominations, I will continue to lead a bipartisan group of colleagues to find a legislative solution. I remain optimistic that we will come to an agreement with the Department of Justice soon."

Senator Gardner's press release included supportive statements from several stakeholders, but his decision was also greeted with some skepticism. For example, a spokesperson for the Colorado Democratic party commented that "[t]he fact that Gardner surrendered his leverage to protect Colorado's legal marijuana industry in exchange for vague promises from a proven liar shows that he's not just a pushover, but a fool as well[.]" Meanwhile, according to press accounts, the DOJ expressed appreciation for the Senator's change in position and indicated it looked forward to continued discussions with him on this issue.

It will be interesting to see whether Senator Gardner's change affects his conversations with the DOJ, and whether those conversations will lead to any clarification from the DOJ about its marijuana enforcement priorities, a critical issue not only in States like Colorado where marijuana has been legalized but also in States like New Jersey that are considering whether to follow suit.