Marijuana Series: A Whirlwind of Activity Leading Up to April 20, 2018

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Including President Trump Breaking From Attorney General Sessions's Views on State Marijuana Laws.

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The ten days leading up to April 20, 2018, featured many significant cannabis-related developments. In this update, we will highlight ten of the most important items, many of which we will explore in future updates and analysis, especially with respect to some of the federal legislative issues.

1. On April 11, President Trump confirmed to Senator Cory Gardner, a Republican from Colorado, that he supported a federalism-based approach to the issue of state marijuana laws and that Attorney General Sessions's decision to rescind the Obama-era Cole memo would not affect Colorado's legal marijuana industry.

2. On April 13, Senator Gardner, who had previously placed a hold on Department of Justice nominees in response to Attorney General Sessions's rescission of the Cole memo, issued a press release titled, "Gardner Protects Colorado's Legal Marijuana Industry: Receives Commitment from President Trump to Support Legislation to Protect States' Rights." In that press release, Senator Gardner explained that "[s]ince the campaign, President Trump has consistently supported states' rights to decide for themselves how best to approach marijuana[.] Late Wednesday, I received a commitment from the President that the Department of Justice's rescission of the Cole memo will not impact Colorado's legal marijuana industry. Furthermore, President Trump has assured me that he will support a federalism-based legislative solution to fix this states' rights issue once and for all." Senator Gardner also commented that "[b]ecause of these commitments, I have informed the Administration that I will be lifting my remaining holds on Department of Justice nominees. My colleagues and I are continuing to work diligently on a bipartisan legislative solution that can pass Congress and head to the President's desk to deliver on his campaign position."

3. That same day during a press briefing, White House spokeswoman Sarah Huckabee Sanders confirmed the President's position on marijuana. Specifically, she stated that "I can confirm the President did speak with Senator Gardner yesterday and again today. We're always consulting Congress about issues, including states' rights, of which the President is a firm believer. And the statement that the Senator put out earlier today is accurate."

4. Congressional members supportive of marijuana reform generally reacted to President Trump's position with some skepticism or cautious optimism. For example, Representative Earl Blumenauer, a Democrat from Oregon and a co-founder of the Congressional Cannabis Caucus, stated that "[t]his is another head-spinning moment[.] We should hope

for the best, but not take anything for granted. Trump changes his mind constantly, and Republican leadership is still in our way. Momentum is clearly building in the states and here in DC[.] The tide is changing. Now is the time to redouble our efforts." Meanwhile, Senator Cory Booker, a New Jersey Democrat who has introduced the Marijuana Justice Reform Act of 2017, which would lift the federal prohibition on marijuana, observed that "[c]ommitments mean little from this president, particularly verbal commitments that go against every policy we've seen coming out of this administration[.] As long as Trump is in the White House and Jeff Sessions is leading the Department of Justice, the only way to truly protect states that have legalized marijuana is for Congress to act."

In contrast, Representative Dana Rohrabacher, a Republican from California who has long advocated for reform of marijuana laws, offered more full-throated support for President Trump's position. In an April 16, 2018, press release titled, "Rohrabacher Praises President's Decision to Respect State Pot Laws," Representative Rohrabacher announced that he is preparing stand-alone legislation, the Cannabis States' Rights Act, that would permanently change federal marijuana law. Specifically, he declared that "I am extremely happy that President Trump has made perfectly clear that he meant his campaign promise to respect state laws with regard to marijuana. Now there should be no question in Attorney General Sessions' mind about the president's intention. This is a fundamental issue of federalism and freedom, as state after state moves to take marijuana out of the hands of the cartels and place it in a competitive market where consumers can be assured of product safety. It also encourages more exploration of medical uses for cannabis, which has shown unquestionable promise in the treatment of multiple ailments and disorders. I look forward to working with President Trump and Senator Gardner to move my legislation through Congress. The authors of our great Constitution most assuredly would approve.

"Meanwhile, in an April 18 interview, Senator Gardner indicated that he is 80% done with a bill that he is preparing to ensure that states do not violate current federal law and that would permit cannabis businesses to access the financial system, which is a huge problem for cannabis businesses.

5. On April 11, former Republican House Speaker John Boehner, a long-time, ardent opponent of marijuana reform, announced that he was joining the Board of Acreage Holdings, a cannabis business, and tweeted the following message: "I'm joining the board of #AcreageHoldings because my thinking on cannabis has evolved. I'm convinced de-scheduling the drug is needed so we can do research, help our veterans, and reverse the opioid epidemic ravaging our communities." In subsequent interviews, Mr. Boehner expressed his disagreement with Attorney General Sessions's decision to rescind the Cole memo and cited public support of marijuana reform as one of the key reasons why he changed his position. In addition, Bill Weld, the Republican former Governor of Massachusetts, also joined the Board of Acreage Holdings and expressed his support for President Trump's position.

6. On April 12, Senator Orrin Hatch, a Republican from Utah, and Senator Kamala Harris, a Democrat from California, who are both on the Senate Judiciary Committee, wrote a letter to Attorney General Sessions asking that the Drug Enforcement Agency ("DEA") end its efforts to impede medical marijuana research efforts by delaying approvals for manufacturers growing research-grade medical marijuana. The Senators began their letter by stating: "We write to request that you enable the [DEA] to fulfill its charter of lawfully registering manufacturers of the controlled substance of marijuana for research without delay. Research on marijuana is necessary to resolve critical questions of public health and safety, such as learning the impacts of marijuana on developing brains and formulating methods to test marijuana impairment in drivers." Then, on April 19, Senator Hatch tweeted the following message: "Tomorrow, purely coincidentally, we will be talking about marijuana. We'll get in the weeds to hash out some of the most potent arguments as to why it might be the budding answer doctors have long strained to find for countless chronic conditions."

7. On April 19, Senator Bernie Sanders, an Independent from Vermont, announced that he had become the third co-sponsor, joining Senator Ron Wyden, a Democrat from Oregon, and Senator Kirstin Gillibrand, a Democrat from New

York, of Senator Booker's marijuana reform legislation, the Marijuana Justice Act. Senator Sanders offered the following rationale for his decision: "[h]ere is the simple truth: Blacks and whites have similar rates of marijuana use, but black people are far more likely to be arrested for it. Last year, about 600,000 people were arrested for possession of marijuana. Many of those people, disproportionately people of color, have seen their lives destroyed because they have criminal records as a result of marijuana use. That has got to change[.] As I talked about during my campaign, we must end the absurd situation of marijuana being listed as a Schedule 1 drug alongside heroin. It is time to decriminalize marijuana, as many states have already done, and end the failed war on drugs. We must invest in jobs and education, not more jails and incarceration."

Senator Booker welcomed Senator Sanders's support, as he stated that "[m]arijuana legalization is an issue whose time has come – it's no longer a matter of if, it's a matter of when[.] This bill is about justice and the reality that low-income communities and communities of color have been disproportionately targeted by the War on Drugs, which was not really a war on drugs as much as it was a war on people. This issue is about moving our country toward greater justice for communities of color and low-income communities and I'm excited that Senator Sanders is lending his voice and support to this movement."

8. April 19 was also a potentially monumental day because Senator Chuck Schumer, the Senate Democratic leader, announced that he was introducing legislation to decriminalize marijuana at the federal level. In an April 20 press release describing his decision, Senator Schumer stressed that "[t]he time has come to decriminalize marijuana[.] My thinking – as well as the general population's views – on the issue has evolved, and so I believe there's no better time than the present to get this done. It's simply the right thing to do. This legislation would let the states be the laboratories that they should be, ensure that woman and minority owned business have a fair shot in the marijuana industry, invests in critical research on THC, and ensures that advertisers can't target children – it's a balanced approach."

9. April 19 featured a potentially milestone moment concerning cannabis outside of politics, this time in the pharmaceutical space. GW Pharmaceuticals, Plc has developed a medicine, Epidiolex, to treat epilepsy, that was made from a compound in the marijuana plant called cannabidiol. On April 19, a panel of outside advisers to the Food and Drug Administration ("FDA") voted, unanimously, in favor of approval for the drug, finding that its benefits outweigh its risk in treating two rare forms of childhood epilepsy. The FDA has a June 27 deadline to make a final ruling on whether to approve Epidiolex.

10. As to New Jersey, on April 19 Monmouth University released a poll that found that 59% of New Jersey residents supported legalizing possession of small amounts of marijuana for recreational purposes, while 37% were opposed. When Monmouth University last polled on this issue four years ago, 48% were in favor while 47% were opposed. The poll also found that 60% of New Jerseyans think that legalizing marijuana would help the State's economy while only 32% believe that legalization would lead to an increase in drug crimes.