



No Over Taxation!

437 West Colfax Ave., Suite 300, Denver, Colorado 80204; 720-420-9225

October 9, 2013

John Walsh
United States Attorney for Colorado
1225 17th Street, Suite 700
Denver, CO 80202

Re: Colorado Proposition AA, Tax Increase on Marijuana

Dear Mr. Walsh:

This November, Colorado voters will consider Proposition AA, a 15% sales tax plus a 15% excise tax on marijuana sales. City and County of Denver voters will consider an additional 15% sales tax on top of these State taxes. These taxes would be in addition to the taxes already in place on marijuana, 2.9% Statewide and 7.62% in Denver, and Federal taxes that are higher than any other industry due to the inability of these businesses to take full deductions. I serve as Treasurer and General Counsel to the “No on Prop AA” campaign, No Over Taxation, an issue committee registered with the Colorado Secretary of State.

Proposition AA would be the largest tax increase in Colorado history, a reckless proposal that would create a dysfunctional market for marijuana, undermining the goal of the “Alcohol-Marijuana Equalization Initiative,” (Colorado’s Amendment 64; Colorado Constitution, Article XVIII § 16). As a framer and supporter of Amendment 64, the purpose of the measure was to bring marijuana out of Prohibition and regulate it like alcohol.

The pro-Proposition AA campaign, “Committee for Responsible Regulation,” refuses to debate our campaign and refuses to submit their dangerous ideas to open voter scrutiny, as is normal in the political process. The “Yes on AA” campaign is supported by what Jacob Sullum of Reason Magazine has accurately labeled “The Marijuana Cartel,” i.e. the large dispensaries that use burdensome and expensive government regulation and taxation to suppress fair competition from smaller businesses.

Instead of participating in normal political debate, the “Yes on AA” campaign is running a devious campaign of fear, making threats and representations of “backroom” deals with the U.S. Department of Justice. Statements from the “Yes” campaign include that the U.S. Department of Justice supports a “Yes” vote on Proposition AA, and if Colorado voters decide not to tax ourselves at an unprecedented rate and that Proposition AA were to fail, that the U.S. Department of Justice would retaliate against Colorado voters by dismantling Colorado’s marijuana industry with Federal intervention in the form of criminal prosecution and forfeiture of property. Specifically, the “Yes” campaign points to alleged conversations between Colorado

Governor John Hickenlooper, the Governor's Counsel Jack Findlaw, U.S. Attorney General Eric Holder, and yourself, to the effect that you and the U.S. Department of Justice have made a promise to "allow" Colorado's marijuana industry to exist if Proposition AA passes.

Specific past guidance from the U.S. Department of Justice would seem to indicate that in fact a "No" vote on Proposition AA is favored by the Department. The August 29, 2013 memo from Deputy Attorney General James M. Cole does not mention--anywhere in the detailed guidance--local or state taxes on marijuana, but does mention the desire of the U.S. Department of Justice for an enforcement system that is "effective in practice." An effective tax rate of over 50% creates a dysfunctional system that is ineffective "in practice." Basic economics indicate that over-taxation creates a marijuana market ripe for takeover by the unregulated, untaxed, underground market. Your counterpart U.S. Attorney for the Northern District of California, Melinda Haag, also indicated in a February 1, 2011 letter to the City of Oakland that a local government licensing scheme for marijuana cultivation involved "drug proceeds," which the U.S. Government would seize. Oakland then declined to initiate its licensing scheme following this letter.

Moreover, the marijuana-only taxes in Proposition AA run afoul of constitutional law and would be susceptible to legal challenge if passed by voters and collected by state or local governments. See Timothy Leary v. United States, 395 U.S. 6 (1969) (invalidating federal Marihuana Tax Act due to marijuana's federal illegality thus mandating all payers of tax to incriminate themselves). State taxes on marijuana in North Carolina, Massachusetts, Idaho, South Dakota, and Tennessee have all been struck down by courts. The State of Tennessee was even forced to refund millions of dollars it unconstitutionally collected on taxes similar to Proposition AA.

Obviously, the representations of the "Yes" campaign and the Marijuana Cartel are either true or false. The U.S. Department of Justice has a proud history of supporting the civil rights of Americans and protecting our right to self-determination and to vote our conscience without threat or interference. As a former Majority Counsel to the U.S. House of Representatives Judiciary Committee that conducted oversight on the Justice Department, I do not believe that the U.S. Department of Justice would bully voters in this manner.

Either way, sunshine is the best disinfectant. The U.S. Department of Justice should be clear and unambiguous in its position since the "Yes" campaign seeks to use the U.S. Department of Justice as a political bludgeon. Accordingly, we write to inquire of you directly as to whether the U.S. Department of Justice supports a "Yes" or a "No" vote on Colorado Proposition AA. Coloradans do not have a "Maybe" option on this ballot, so it would be greatly appreciated if the U.S. Department of Justice would articulate a clear "Yes" or "No" position on this important matter. There is precedent for the U.S. Department of Justice to be open and honest about endorsing positions on state ballot matters. In 2010, California voters considered Proposition 19, which would have legalized marijuana. The U.S. Department of Justice was then quite explicit in its wishes than Californians vote "No."

If you are not able to respond to our request by October 11, 2013, we will assume that you support the *status quo*, which is a "No" on Proposition AA, and will request the "Yes" campaign correct its misrepresentations.

Thank you very much for your time and consideration of this request. If you have any questions, please contact me via email Robert.Corry@comcast.net. Perhaps we can discuss these matters in person at the upcoming Stanford Law School Reunion, if you plan to attend.

Sincerely,

Robert J. Corry, Jr.
Treasurer and General Counsel