Holder promises to enforce U.S. drug laws if Prop. 19 passes

Attorney general joins local law enforcement officials in opposing legalization of marijuana. Prop. 19 supporters say the U.S. has no legal ground to challenge the measure

By John Hoeffel, Los Angeles Times

October 16, 2010

Stepping up the Obama administration's opposition to Proposition 19, the nation's top law enforcement official promised to "vigorously enforce" federal drug laws against Californians who grow or sell marijuana for recreational use even if voters pass the legalization measure.

U.S. Atty. Gen. Eric Holder's response to the initiative comes as the administration has been under pressure to campaign against it more forcefully. Last week, Mexico's president, Felipe Calderon, chided the Obama administration for not doing enough to defeat it. And last month, nine former heads of the Drug Enforcement Administration publicly urged Holder to speak out.

In a letter sent Wednesday to the former DEA administrators, Holder wrote, "Let me state clearly that the Department of Justice strongly opposes Proposition 19. If passed, this legislation will greatly complicate federal drug enforcement efforts to the detriment of our citizens."

Holder's letter underscores that a period of turmoil, pitting the federal government against pot legalization backers, will ensue if voters approve Proposition 19. After California legalized medical marijuana in 1996 the DEA launched numerous raids against dispensaries and growers.

Los Angeles County Sheriff Lee Baca, who is a co-chairman of the main opposition committee, released the letter at a news conference at his headquarters Friday, flanked by two former DEA heads, the district attorney and the Los Angeles city attorney.

"He is saying it is an unenforceable law and the federal government will not allow California to become a rogue state on this issue," Baca said. "You can't make a law in contradiction to federal law as a state. Therefore Proposition 19 is null and void and dead on arrival."

Proponents of the measure on the Nov. 2 ballot assailed the attorney general's one-page
letter, denouncing his intention to disregard the will of California voters and his defense of a failed war on drugs. "We're not necessarily surprised that the establishment is coming down on the side of the status quo," said Dale Sky Jones, a spokeswoman for the Proposition 19 campaign.

The initiative would allow Californians age 21 and older to grow up to 25 square feet of marijuana and possess up to an ounce. It also allows cities and counties to authorize cultivation and sales, and to tax them. Several cities, including Oakland, appear to be poised to do so if the law passes. Polls have consistently shown that about half of the state's electorate favors legalizing marijuana.

"It takes the smoke right out of their hookah," said Robert Salazar, a spokesman for the No on 19 campaign. He noted that Californians could not count on seeing any of the promised tax revenues if the federal government arrests anyone who engages in commercial pot sales.

In an Aug. 24 letter and a Sept. 13 news conference in Washington, the former DEA chiefs asked Holder to make it clear that the initiative would be preempted by federal law and would put the United States in violation of international drug treaties, warning about "the unfortunate message that this silence conveys." Holder, responding two months later, did not mention either issue.

Instead, he noted that prosecutions under the federal Controlled Substances Act remain a "core priority" and wrote, "We will vigorously enforce the CSA against those individuals and organizations that possess, manufacture, or distribute marijuana for recreational use, even if such activities are permitted under state law." He did not say how he intends to do that, but said the department "is considering all available legal and policy options."

Baca, Los Angeles County Dist. Atty. Steve Cooley and the other law enforcement officials insisted the initiative is unconstitutional because it conflicts with federal law. Baca also said he would not uphold the measure, if it passes, and would arrest anyone with a 25-square-foot plot.

Alex Kreit, an associate professor at Thomas Jefferson School of Law in San Diego and an initiative supporter, said Baca would be arresting people for acts that are no longer illegal under state law. "If he does that, he's inviting lawsuits left and right for unlawful arrest," he said.

Cooley predicted that the federal government would sue and a court would issue an injunction. "He didn't quite come out and say, 'We're going to sue you, California,' but it was close enough," said Cooley, who is also the Republican candidate for attorney general.

The initiative's proponents, reading a different implication between the lines, said Holder's decision not to mention a lawsuit suggests the department has concluded it has no grounds to challenge the law. Department lawyers have been meeting to discuss the issue. "It's almost as if they acquiesced that they're not going to challenge Prop. 19," said Jeff Jones, a co-sponsor of Proposition 19 whose Oakland cannabis club closed after the federal government sued.
Robert Raich, a lawyer who has handled two medical marijuana cases that went to the U.S. Supreme Court and supports Proposition 19, said the initiative does not violate federal law because it changes only state law, not federal law. "Simply because California and the federal government choose to punish an act differently does not mean they have a conflict," he said. He said it is no different than the state's medical marijuana laws, which have been upheld in court.

But he said DEA agents could still enforce federal drug laws. "If the federal government wanted to waste its limited resources trying to prosecute some marijuana facility in Oakland, then nothing would stop them from doing that," he said.

The measure's proponents noted that Proposition 215, the medical marijuana law, drew a similar federal reaction. "This is 1996 all over again," said Stephen Gutwillig, the state director of the Drug Policy Alliance. But he noted that, besides California, 13 states and the District of Columbia now allow medical marijuana. "All that happened without a single change in federal law."

Gutwillig criticized the Obama administration for continuing a costly war on drugs that has failed. But Peter Bensinger, who headed the DEA between 1976 and 1981 and was at the news conference, described it as a success because drug use is substantially lower now than at its peak in 1978.

President Obama has said he opposes legalizing marijuana, but last year his administration ended prosecutions of medical marijuana collectives and patients that abide by state laws, in effect choosing to ignore activities that violate the Controlled Substances Act.

Until Holder released his letter Friday, the Obama administration's fight against the initiative was largely being carried out by the drug czar, Gil Kerlikowske. The White House press office, calling it a "sensitive issue," referred questions on the president's role to the Justice Department, which did not respond to a request for information or for an interview with Holder.

john.hoeffel@latimes.com

Copyright © 2010, Los Angeles Times