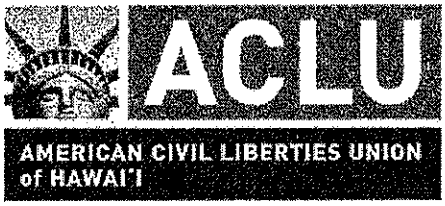
LATE



Committee: Committee on Commerce and Consumer Protection
Hearing Date/Time: Tuesday, March 11, 2014, 9:30 a.m.
Place: Room 229
Re: *Testimony of the ACLU of Hawaii in **Support of (and with Comments on)** H.B. 1503, Relating to the Residential Landlord-Tenant Code*

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B. 1503, but respectfully recommends that the Committee clarify the bill's language.

While this bill clearly protects tenants who possess a medical marijuana *certification*, the language is not clear as to whether it also protects tenants who *use* medical marijuana pursuant to that certification. The bill currently states in part: "A provision in a rental agreement allowing for eviction of a tenant who has a valid certificate for the medical use of marijuana as provided in section 329-123 in any form is void...." As written, the bill prohibits the eviction of a tenant based on the tenant's *possession* of a certificate, but does not expressly prohibit the eviction of a tenant for the tenant's *use* of medical marijuana. The Legislature's clear intent (as set forth in the description of the bill) is to protect the use (not just the possession), such that the ACLU of Hawaii respectfully recommends an amendment to the bill to clarify this language.

Thank you for the opportunity to testify.

Sincerely,

Daniel Gluck
Senior Staff Attorney
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

LATE

HB1503
Submitted on: 3/10/2014
Testimony for CPN on Mar 11, 2014 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Tippens	Individual	Support	Yes

Comments: While I am in support of this legislation, I realize there is opposition. I would like to address some points I have seen in opposition of this measure and then continue with a few statements of my own. I have read an article in opposition of this legislation in the Hawai'i Free Press written by Andrew Walden. Mr. Walden lists four questions in his article that may put some citizens ill at ease simply because answers haven't been provided and I feel concerns could be lessened if they are addressed. Mr. Walden expressed concern that as written, the law will protect any person who uses medical marijuana, regardless of whether they are authorized to use it, making that individual 'exempt' from eviction. He went on to use an example of an individual without a medicinal marijuana license using marijuana and seeking the protections afforded under this measure under the auspices of medicinal use. The medicinal marijuana program in Hawaii specifies that, in order to enjoy the protections afforded to medical cannabis users outlined in the program, the individual must be a participant in the medical marijuana program. HB 1503 states in lines 6&7 that the measure applies to a "tenant who has a valid certificate for the medical use of marijuana as provided in section 329-123." This legislation isn't written to protect the practice of using medicinal marijuana, but to protect patients that have a medically established need for cannabis therapy and have complied with the existing laws in this state to allow them to engage in said therapy. The next concern expressed by Mr. Walden seems to me to be a restatement of the first, a concern that the laws can be interpreted to protect persons that don't actually have a medical need for cannabis treatment. I first want to refer back to my first point that, in lines 6&7, the legislation specifies it only applies to a tenant that holds a valid certificate for medical marijuana use. The state has already established a system it believes to be adequate to ensure that those persons holding a valid certificate for medical marijuana use are in fact in medical need. I do not think this piece of legislation alters the state's medical marijuana program's ability to continue to do so effectively in the future. The third point Mr. Walden makes addresses the conflict that currently exists between federal and state laws regarding marijuana. This point seems moot to me, initially for the simple reason that this is a state law and he is expressing federal concerns. Barring this fact from discussion, the US Department of Justice Deputy Attorney James Cole released a memorandum issuing guidance regarding marijuana enforcement to all United States Attorneys on August 29th 2013 (attached), advising that the federal government has established that enforcement of the Controlled Substances Act (CSA) was "not an efficient use of federal resources" in cases involving medicinal patients with small grows and further advised the federal government is more concerned with large scale grow operations set up to fund criminal drug trafficking organizations, such as the cartel. So, concerns surrounding this conflict of law should

be eased considering the Department of Justice has issued guidance to federal prosecutors to defer to state legislation regarding marijuana in all but a few cases, which were outlined specifically and do not include small scale, personal, in home grows. The Department of Justice memorandum can be found at: http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf Mr. Walden finalizes his list of concerns by bringing forward the valid concern that this legislation could create a 'trap' for people who have tenants whose medicinal marijuana use violates the condominium's house rules, leaving the owner unable to evict the tenants and exposing them to repercussions such as financial penalty and, in some cases, foreclosure. This is a valid concern and I propose to address this concern, the measure be amended to extend the tenant's protections against eviction or penalty be extended to include repercussions resulting from a perceived violation of condominium bylaws. I hope this calms the fears associated with the perceived 'flaws' in the measure, I would now like to proceed forward to the personal side of my testimony. Mr. Walden has inspired me to talk about what this legislation does for owners, not simply tenants. Many tenants currently maintain medicinal marijuana grows in their rental without the knowledge of the owner. As a result, tenants are much less likely to report problems with the property until the problem has become unsafe or otherwise exacerbated for fear the owner discover the grow, exposing the tenant to eviction. This law allows tenants to be protected, allowing them to alert the owner to any problems early on, hopefully at a stage which can be addressed and corrected inexpensively and quickly. In addition to all the discussion so far is the simple fact that we are talking about patients. These patients are people and they have found relief and healing through the use of a plant. Our laws should protect those patients from people who hold an unfavorable stereotype of marijuana users, it's just another line people are drawing to separate themselves from one another, which only creates discord. The Legislature should be sending a message that is consistent with the opinion of the majority of Hawaiian voters and that opinion supports legislation that protects the right of individuals to make personal decisions regarding their medical treatment personally, without fear of being evicted for using something that they (or at least I) have found to work exponentially better than prescription narcotics. I am in support of this legislation and thank the Ladies and Gentlemen of the Committee for their time and service to the state of Hawai'i. Mahalo. Michelle Tippens Honolulu, Hawai'i 96819

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation