



STEVE COOLEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

April 19, 2010

RE: INITIATIVE MEASURE 09-0024

Dear Recipient:

I fully intend to inform the public of the dangers of this incredibly poorly written initiative.

I look forward to joining with many others in the fight against this initiative. I have every hope that the Attorney General will disallow the initiative's title and prepare an accurate summary. We need to work hard to defeat this fraud against the public.

Very truly yours,

A handwritten signature in black ink that reads "Steve Cooley". The signature is stylized, with a large, sweeping flourish at the end.

STEVE COOLEY
District Attorney

Attachment

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April 13, 2010

Honorable Edmund G. Brown, Jr.
Attorney General of the State of California
1300 I Street
Sacramento, California 95814

Dear Honorable Brown:

**The Title and Summary of Initiative Measure 09-0024
Are Misleading and Will Confuse Voters**

Initiative Measure 09-0024, "The Regulate, Control and Tax Cannabis Act of 2010" (hereafter "the Act"), impermissibly and unfairly misleads the public into believing that the Act accomplishes what its title denotes, namely, that it regulates, controls, and taxes cannabis. Quite to the contrary, the Act provides no framework for accomplishing these feats, but instead, delegates unfettered regulatory and enforcement responsibilities to local city and county governments. In addition to the Act's failure to build a statewide regulatory system, it is internally inconsistent; contains provisions that will limit the rights of property owners and employers; bars the State of California from taxing cannabis; and will conflict with the Federal Drug-Free Workplace Act of 1988 (hereafter "DFWA"), thereby precluding businesses from receiving billions of dollars in federal funding.

Further, the summary suggests that state and local governments will reap major tax and other fiscal benefits. This is simply not the case. The title of Initiative Measure 09-0024 inaccurately and deceptively masks the initiative's real effects. I ask that you reject the proposed Title and Summary.

"The Regulate, Control and Tax Cannabis Act of 2010" allows local governments to "adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize . . . cultivation, processing, distribution, . . . transportation, sale and possession for sale of cannabis and delegate regulatory responsibilities to local governments (§ 11301).

While local governments may impose taxes and fees on cannabis-related activities, the state government would be precluded from imposing any cannabis specific tax or fee (§ 11302).

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A. The Act does not Control Cannabis

In relevant part, the Act's nonbinding preamble provides that the Act is intended to accomplish the following:

Reform California's cannabis law in a way that will benefit the state[;]
Regulate cannabis like [California law regulates] alcohol[;] Implement a
legal regulatory framework to give California more control over
cultivation, processing, transportation, distribution, and sale of cannabis[;]
. . . Ensure that if a city decides it does want to tax and regulate the buying
and selling of cannabis . . . that a strictly controlled legal system is
implemented to oversee and regulate cultivation, distribution, and sales . . .
.[;] Tax and regulate cannabis to generate billions of dollars for our state
and local governments . . . [;] [and to] [a]llow the Legislature to adopt a
statewide regulatory system for a commercial cannabis industry. (The Act,
Section 2(B).)

The Act itself is completely at odds with the idea that it provides regulatory framework giving "California more control over [the] cultivation, processing, transportation, distribution, and sale of cannabis," (The Act, section 2(B)(3).) The Act creates no regulatory framework whatsoever as such responsibilities are delegated to the state's 478 cities and 58 counties. This local government "figure it out" approach creates confusion and misunderstanding, and actually limits state control over marijuana-related activities.

Moreover, this approach in no way "regulate[s] cannabis like alcohol." Alcohol is controlled by the extensive legal framework set forth in article XX, section 22 of the California Constitution and the Alcohol Beverage and Control Act (Bus. & Prof. Code, § 2300, et seq.). Under this framework, the state has "the exclusive right and power to license and regulate . . . alcoholic beverages within the State." (Cal. Const., Art XX, § 22.) Furthermore, it establishes the Department of Alcoholic Beverage Control (hereafter ABC) which is responsible for investigating and enforcing the provisions of the Alcohol Beverage and Control Act.

Thus, the Act's deference to local authorities regarding marijuana regulation is nothing like how alcohol is controlled in California. Furthermore, forcing local governments to promulgate comprehensive cannabis-related regulations will not only unduly burden local governments, but is also certain to lead to a chaotic and confusing result.

B. The Act Deregulates and Eliminates Government Control of Cannabis

Despite the Title's reference to regulating cannabis, the Act is deregulatory in nature. Proposed section 11300 provides that a lawful occupant, lawful resident or guest may cultivate cannabis on private property for personal consumption. (§ 11300(a)(ii).) However, the area of cultivation may not exceed twenty-five square feet per private residence or, in the absence of any residence, the parcel. (§ 11300(a)(ii).) The Act defines "residence" as a "dwelling or structure, whether permanent or temporary, on private or public property, intended for occupation by a person . . . for residential purposes." (§ 11304(d).)

Thus, the Act and more specifically the aforementioned provisions, do not limit or regulate cannabis cultivation but instead create an absolute right to cultivate marijuana on private property, and more troubling, creates the possibility that cultivation may in some circumstances be done on public lands. Further complicating matters, the proposal is ambiguous as to whether a property owner maintains the right to prohibit cultivation on his own land. Proposed section 11300, subsection (a), provides that "[c]ultivation on leased or rented property may be subject to approval from the owner of the property." (§ 11300(a)(ii).) This provision does not state "shall be subject to approval," and therefore, is unclear as to who determines if property owner approval is required.

In light of the foregoing, Initiative Measure 09-0024 does not control or regulate cannabis. It merely permits certain behavior associated with cannabis while preventing state or local control over such behavior. For example, state or local governments may not prevent cannabis cultivation on private property. Additionally, the Act lacks clarity as to whether a property owner may even prevent a land occupier, or even a "guests," from cultivating on the owner's property.

C. The Act Does Not Permit the State of California to Tax Marijuana

The proposed Title's reference to taxing cannabis will mislead the public into believing that the Act authorizes a state marijuana tax.

Proposed section 11302, entitled "Imposition and Collection of Taxes and Fees," permits local governments to tax cannabis-related activities in order to "raise revenue . . . or [] recoup any direct or indirect costs associated with the . . . activities permitted" by the Act. (§ 11302(a).) However, proposed section 11302, subsection (b), prohibits any marijuana-specific state tax. The proposal provides that:

[a]ny licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties, or other financial responsibilities imposed on all or similarly situated businesses, facilities or premises . . .

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(§ 11302(b).) As such, the Act not only assigns the impossible task of devising a marijuana-related regulatory scheme to local governments, but the only tax benefit to the citizenry of the state will come in the form of local taxes meant to “recoup” costs associated with the newly legalized activities. This limited tax role is not apparent from the title of the Act as the Title implies, and the Act’s preamble explicitly provides, that the initiative is intended to tax and regulate cannabis to generate billions of dollars for our *state government* as well. (The Act, section 2(B)(9).)

D. The Act Will Cost the State Billions in Federal Funding While Limiting Employers’ Rights to Maintain a Safe and Drug-Free Workplace

The proposed Title of Initiative Measure 09-0024 incorrectly implies that California will benefit financially from its passage. Proposed section 11304, subsection (c), provides that:

No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.

(§ 11304(c).) Since this provision protects all “conduct permitted by [the] Act,” a California employer will no longer be able to: screen job applicants for marijuana use; regulate any employee conduct related to the use, transportation, or cultivation of marijuana, unless the employer can prove job impairment; or choose to maintain a drug-free workplace consistent with federal law. Unlike the Act’s preamble, which provides that the “Act is not intended to affect . . . controlled substances in the workplace or by specific persons whose jobs involve public safety,” the language of Section 11304(c) is devoid of any such limitation.

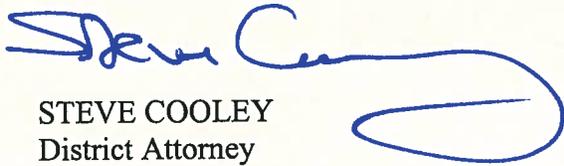
Furthermore, limiting an employer in this fashion will have devastating economic effects on California. The Federal Drug-Free Workplace Act of 1988 requires that all employers who receive government grants and contracts greater than \$100,000 maintain a drug-free workplace. (41 U.S.C. §§ 701-707.) Since proposed section 11304, subsection (c), would require grant recipients to violate the DFWA, it would preclude certain businesses, research institutions, and state and local governments from obtaining billions in federal funding. Additionally, proposed section 11304, subsection (c), would require employers to violate several federal mandates. For example, the U.S. Department of Transportation requires persons who operate airplanes, locomotives, trucks and buses to be removed from their respective jobs if they test positive for any narcotic.

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Therefore, the implication drawn from the proposed Title of Initiative Measure 09-0024, that California will benefit financially from its passage, is wrong and highly misleading.

The Title of Initiative Measure 09-0024 states that the Act will regulate, control, and tax cannabis. Instead, the proposal legalizes certain marijuana-related activities and entrusts the design, implementation, and enforcement of such regulations to overburdened local governments. The initiative also creates the implication that the state will benefit from taxing cannabis which is misleading and wrong. The Act explicitly prohibits a state marijuana tax and would deprive California of billions of dollars in federal funding because the Act requires employers to violate the federal DFWA. For all of these reasons, the Title and Summary of 09-0024 should not be approved.

Very truly yours,



STEVE COOLEY
District Attorney

c: James Humes, Chief Deputy Attorney General
Krystal Paris, Initiative Coordinator