

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

February 24, 2015

The Honorable Muriel Bowser
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Mayor Bowser:

The Committee is investigating your recent assertions that Initiative 71 will, in your opinion, take effect on February 26, 2015, thereby making it legal to possess up to two ounces of marijuana in the District of Columbia. The Continuing Resolution enacted last December made clear no appropriated funds of any sort may be used “to enact any law, rule, or regulation to legalize” marijuana “for recreational purposes.”¹ As such, your assertion that Initiative 71 takes effect on Thursday is contrary to law. We strongly suggest you reconsider your position.

Under the Constitution, Congress has the power to “exercise exclusive Legislation in all Cases whatsoever, over...the Seat of the Government of the United States.”² Accordingly, and as the Supreme Court has emphasized, this Clause provides Congress with “plenary powers” over the District of Columbia:

Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes....It is apparent that the power of Congress under Clause 17 permits it to legislate for the District in a manner with respect to subjects that would exceed its powers, or at least be very unusual, in the context of national legislation enacted under other powers delegated to it under Article I, Section 8.³

¹ Public Law No. 113-235, Consolidated and Further Continuing Appropriations Act, 2015, Sec. 809. The same law also stated no appropriated Federal funds “may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use or distribution of” marijuana.

² Constitution of the United States, Article I, Section 8, Clause 17.

³ *Palmore v. United States*, 411 U.S. 389, 397-98 (1973).

Given Congress's broad powers to legislate with regard to the District of Columbia it would be unprecedented for the District to take actions proscribed by legislation passed by Congress and signed by the President.

It is a basic legal tenet that legislation is not enacted and does not become law until the final act effectuating that process occurs.⁴ Under the plain terms of the Home Rule Act, a D.C. bill does not become law until the expiration of the 30- or 60-day layover period after the bill is transmitted to Congress.⁵ The D.C. Circuit has confirmed what constitutes enactment under the District of Columbia's initiative process. The Court stated "[t]he [D.C.] initiative process is subject to the same legislative restrictions as the D.C. Council, *including the congressional veto power...*"⁶ It is clear from the Court's statement that enactment of any initiative does not occur until the expiration of the 30- or 60-day layover period with Congress. Therefore, Initiative 71 was not enacted prior to the language in the Continuing Resolution preventing it from moving forward.

In fact, the Continuing Resolution was enacted prior to the District transmitting Initiative 71 to Congress; that transmission was ineffective and contrary to law. Even the mere act of transmitting the Initiative by the District is likely in violation of the Anti-deficiency Act. Further, any other steps taken by the District on Initiative 71, such as developing rules for law enforcement or the general public regarding Initiative 71, are violations of the current Continuing Resolution and the Anti-deficiency Act.

If you decide to move forward tomorrow with the legalization of marijuana in the District, you will be doing so in knowing and willful violation of the law.

Please provide a response to the following by March 10, 2015:

1. A list of any District of Columbia employee who participated in any way in any action related to the enactment of Initiative 71, including the employee's salary and position, the amount of time each employee engaged in the action(s), and the action(s) taken by the employee. Please also provide a list of any employee who declined to participate in activities related to Initiative 71.
2. The amounts of any funds expended by activity on enactment of Initiative 71, including, but not limited to, the transmission of Initiative 71 to Congress and developing rules for law enforcement or the general public.
3. Any document or communication related to the enactment of Initiative 71.

⁴ See Black's Law Dictionary defining "enact" to mean "to make in law by authoritative act."

⁵ Home Rule Act, Sect. 1-206.02(c)(1), Limitations on the Council (2014).

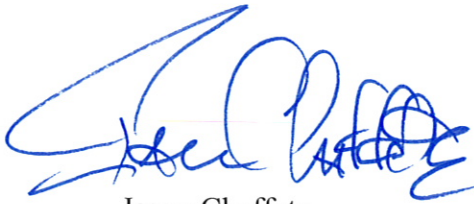
⁶ *Marijuana Policy Project v. United States*, 304 F.3d 82, 83-84 (D.C. Cir. 2002) (emphasis added) (citing *Convention Ctr. Referendum Comm. v. D.C. Bd. Of Elections & Ethics*, 441 A.2d 889, 897 (D.C. 1981)). Indeed, the D.C. Attorney General acknowledged this in his recent legal opinion when he wrote "the congressional ban on the expenditure of funds to enact legislation applies to the *entire legislative process as a whole* (emphasis added)." Memorandum from Karl A. Racine to The Honorable Vincent Orange, *Legality of Hearings on Bill 21-23, the Marijuana Legalization and Regulation Act of 2015*, February 4, 2015.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the committee has authority to investigate “any matter” at “any time.”

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have questions about this request, please contact the Committee at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Mark Meadows
Chairman, Subcommittee on
Government Operations

The Honorable Elijah J. Cummings, Ranking Member

Enclosure