

Economic Development and Cannabis

Some of the Big Challenges

House Committee on Economic Development and Trade

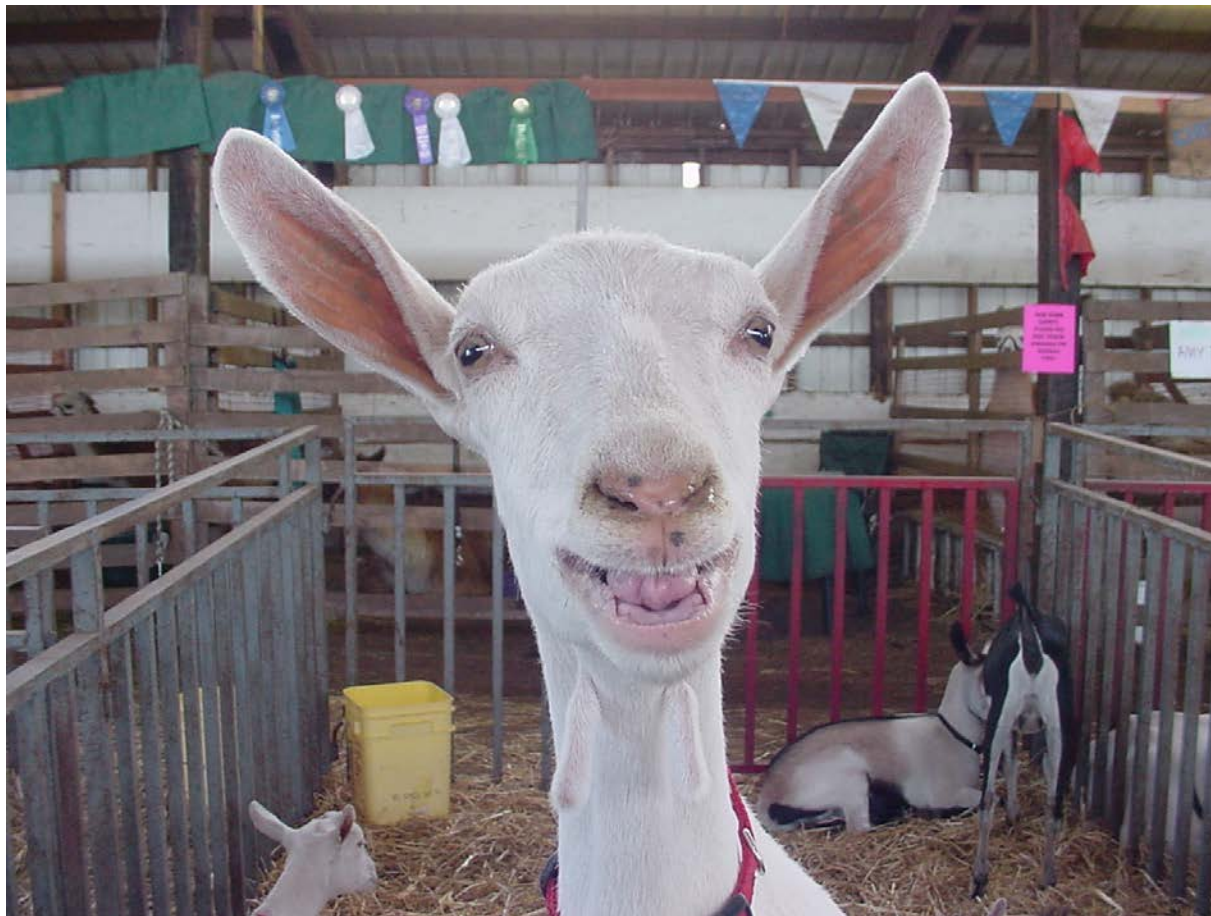
Monday, February 26, 2018, Hearing Room E, State Capitol, Salem, Oregon

Rob Bovett
AOC Legal Counsel

Outline

- **A. Quick review of local regulation**
- **B. Some of the ongoing challenges**

But First



AOC Position

- **Neutral on legalization of marijuana**
- **Promote and defend**
 - **Local opt in or out of marijuana businesses**
 - **Local reasonable regulation of time, place, and manner of marijuana businesses**
 - **Local tax options**



AOC Marijuana Publications

<http://oregoncounties.org/news/publications/marijuana/>

Marijuana



This page contains AOC publications relating to regulation and taxation of marijuana in Oregon.

In 1973, Oregon became the first state in the Nation to decriminalize certain user amounts of marijuana (1973 Oregon House Bill 2936). In 1998, Oregon became the second state in the Nation to legalize medical marijuana (1998 Oregon Ballot Measure 67). In 2014, Oregon became the third state in the Nation to legalize recreational marijuana (2014 Oregon Ballot Measure 91).

Marijuana touches on many policy areas in which counties are heavily involved, such as **public health, public safety, land use, governance, and economic development**, to name just a few. AOC and its steering committees are therefore directly involved in marijuana policy in the Oregon legislature. The lead role for AOC is the AOC Governance Committee and AOC Legal Counsel Rob Bovett.

Publications

AOC Proposed 2018 Legislation

- * State Legislation: Southern Oregon Marijuana Initiative (approved by the AOC Legislative Committee on December 11, 2017)
 - Draft Legislation (PDF) (2 pages) (222kb)
 - Background, Logic Model, and Summary (PDF) (3 pages) (100kb)
- * Federal Legislation (approved by the AOC Legislative Committee on January 8, 2018)
 - Draft Legislation (PDF) (6 pages) (115kb)
 - Background, Logic Model, and Summary (PDF) (3 pages) (97kb)
 - Proposed NACo Resolution (PDF) (1 page) (43kb)

Regulation of Marijuana in Oregon (history, laws, rules, local issues)

- * PowerPoint (PDF) (197 slides) (8mb) (last updated January 12, 2018)

Enacted 2017 Oregon Cannabis Legislation (last updated August 22, 2017)

- * Senate Bill 56 (The Miscellaneous Bill) (2017 Oregon Laws, Chapter 476)
- * Senate Bill 502 (The Marijuana Offense Bill) (2017 Oregon Laws, Chapter 21)
- * Senate Bill 303 (The Minor in Possession Bill) (2017 Oregon Laws, Chapter 20)
- * Senate Bill 1015 (The Hemp Transfer Bill) (2017 Oregon Laws, Chapter 531)
- * Senate Bill 1057 (The Omnibus Bill) (2017 Oregon Laws, Chapter 183)
- * House Bill 2197 (The State-Tribal Tax Bill) (2017 Oregon Laws, Chapter 495)
- * House Bill 2198 (The Medical Bill) (2017 Oregon Laws, Chapter 613)
- * House Bill 3470 Sections 30-37 (in lieu of Senate Bill 845) (The Tax Distribution Bill) (2017 Oregon Laws, Chapter 725)

New Oregon Marijuana Offenses (effective April 21, 2017)

- * Handout (PDF) (2 page handout) (172kb) (last updated April 25, 2017)
- * PowerPoint (PDF) (34 slides) (1mb) (last updated May 8, 2017)

2016 Oregon Marijuana Laws (selected)

(PDF) (139 pages) (1mb) (last updated April 5, 2016)

Update for the Joint Marijuana Legalization Committee regarding the results and impacts of November 2016 marijuana elections

- * PowerPoint (PDF) (18 slides) (1mb) (December 14, 2016)

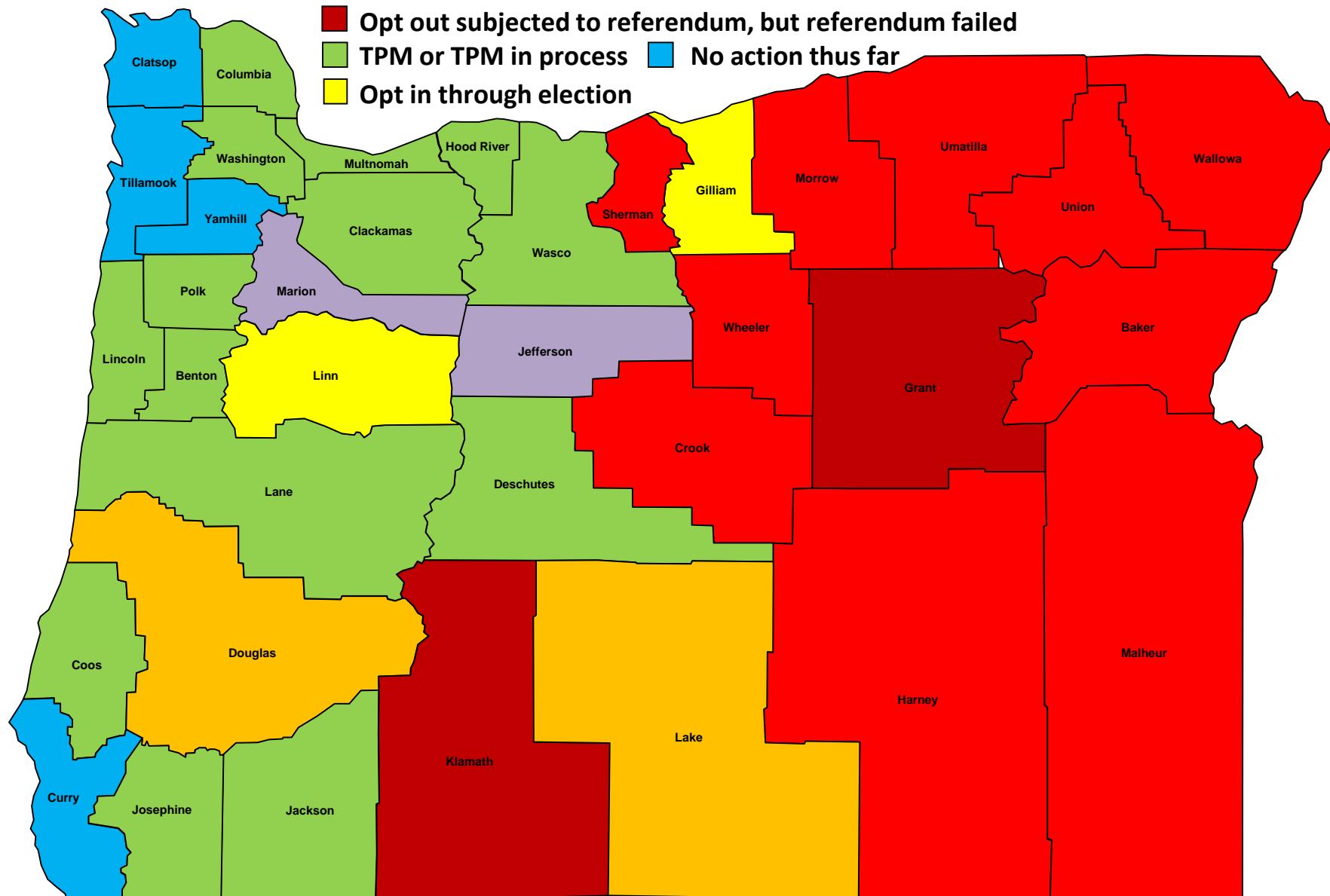
A. Quick review of local regulation

Three Issues

- **1. Opt in/out**
- **2. Regulations**
- **3. Taxation**

Local Control of Marijuana Businesses in Oregon Counties

- Opt out
- Opt out through election
- Opt out of retail only through election
- Opt out subjected to referendum, but referendum failed
- TPM or TPM in process
- No action thus far
- Opt in through election



2. Local Regulations

- **Land use and zoning**
 - 36 counties with 36 different land use plans
 - LUCS required for all OLCC producer, processor, wholesaler, and retailer licenses, except small canopy producers
- **Local time, place and manner regulations**
 - Supplement to state laws and rules

3. Local Taxation

- **Up to 3% supplemental local tax on sales**
 - Medical products exempt
 - Must hold local election
 - general election
 - November of even-numbered year



Local Retail Marijuana Tax

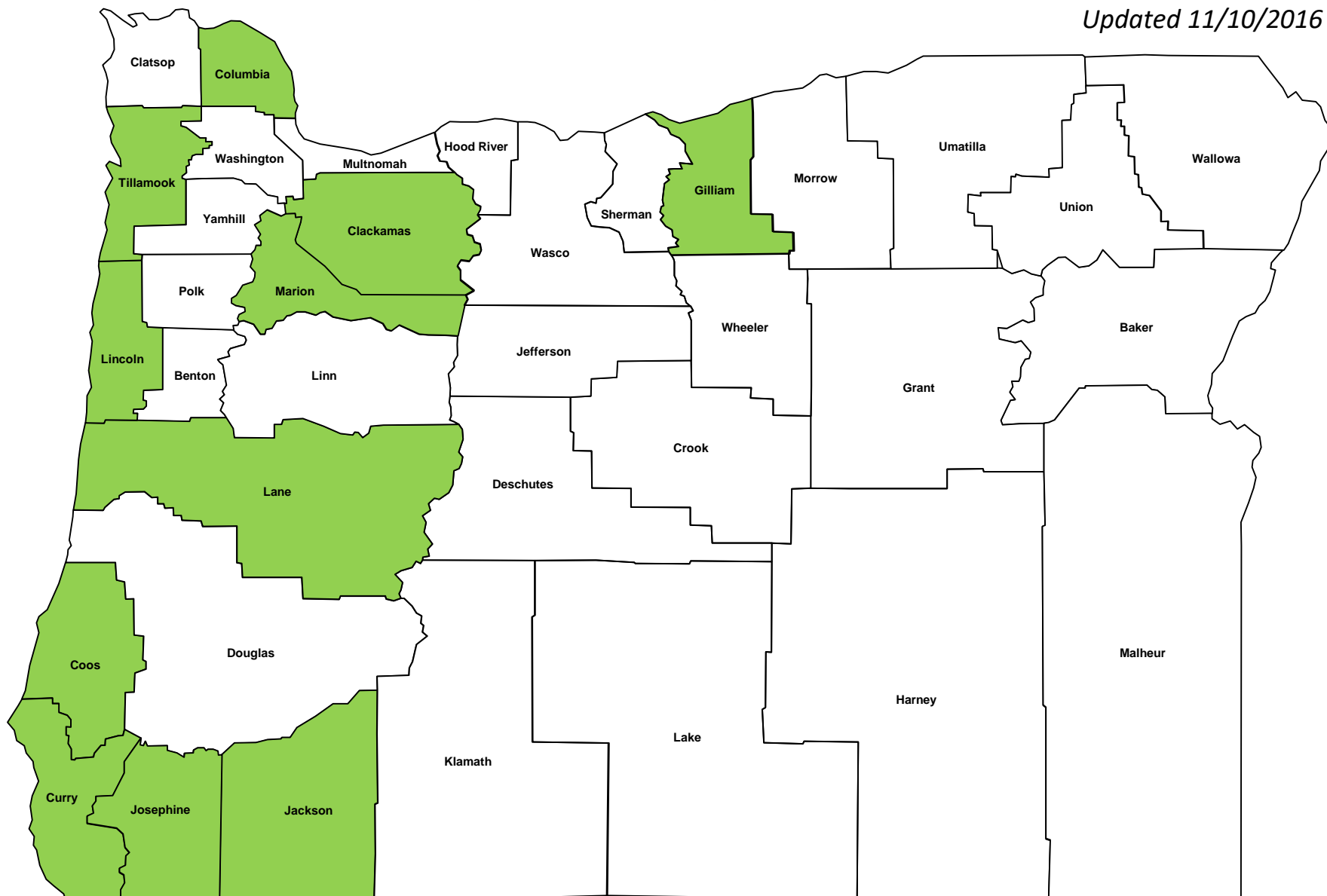
- **Election on November 8, 2016**
- **111 counties and cities**
 - 11 counties
 - 100 cities
- **All 111 passed**
 - Most by significant margins



Marijuana Local Option Tax in Oregon Counties

■ 3% local option marijuana tax passed November 8, 2016

Updated 11/10/2016



B. Some of the ongoing challenges

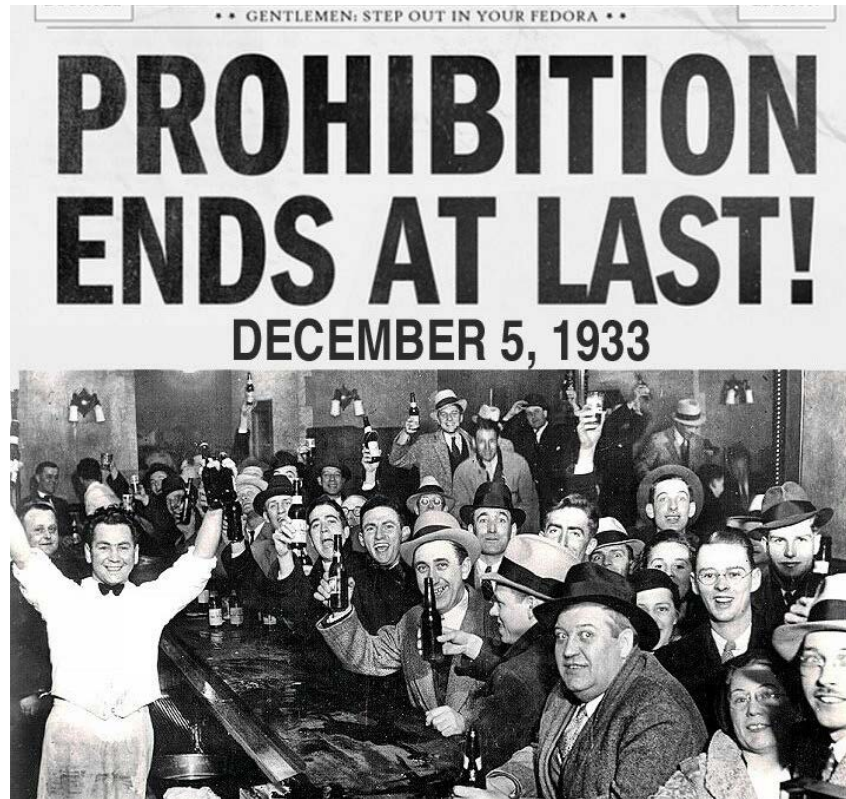
I've picked out two for today

From my own list of ongoing challenges:

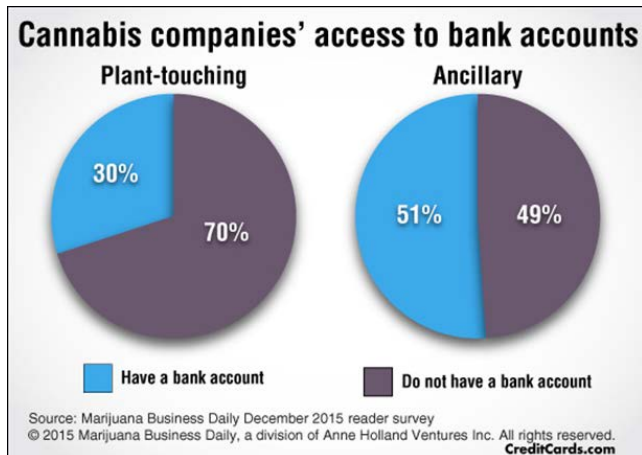
- **1. Federal-State Conflict – Prohibition v Legalization**
 - Banking and income taxation
 - Leakage
- **2. Local regulation and NIMBY**
 - TPMs and land use
 - RICO

1. Federal-State Conflict

- A unique policy arena
 - As compared to post-prohibition



Banking and Income Taxation



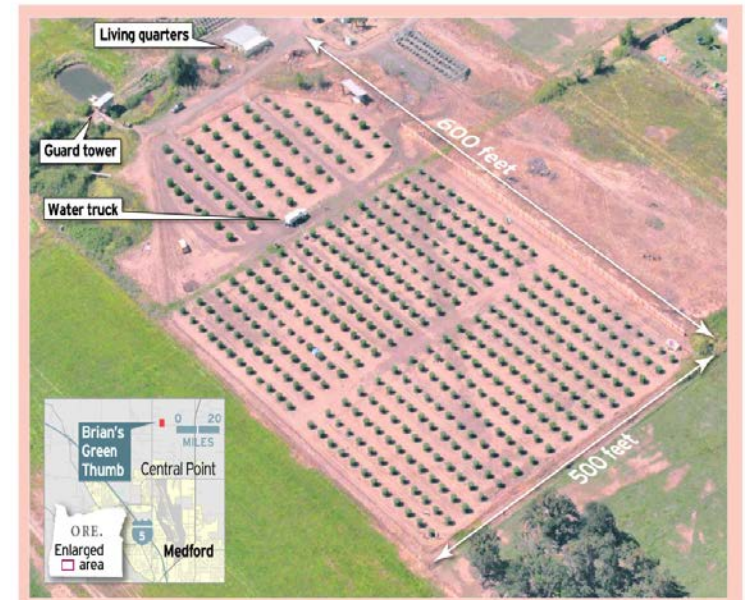
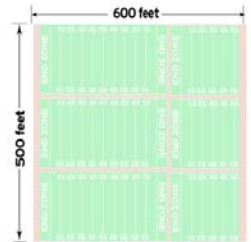
Leakage

- Black market
 - Intrastate *and* interstate
- Grows
 - Diversion
 - Illegal grows/illegal



A big harvest at Green Thumb Farm

Federal agents at Brian's Green Thumb Farm, shown in this surveillance photo, found more than 1,000 pounds of marijuana, two processing machines and a money counter. Prosecutors say the operation – large enough to accommodate 4½ football fields – exemplifies the massive over-production achieved by people exploiting Oregon's medical marijuana program. Operator Brian Wayne Simmons has been charged with drug conspiracy and is awaiting trial.



Source: U.S. Drug Enforcement Administration.

DAN AGUAYO/THE OREGONIAN

The Feds and Oregon

The Oregonian

Oregon defends legal marijuana market to feds

June 12, 2017

By Noelle Crombie



High-level state officials met recently with the U.S. attorney for Oregon to defend the state's efforts to regulate marijuana in a state notorious for black market trafficking.

The session, disclosed publicly Monday, took place as the Trump administration re-examines the federal government's approach to marijuana enforcement.

http://www.oregonlive.com/marijuana/index.ssf/2017/06/oregons_top_federal_prosecutor.html

The Feds and Oregon



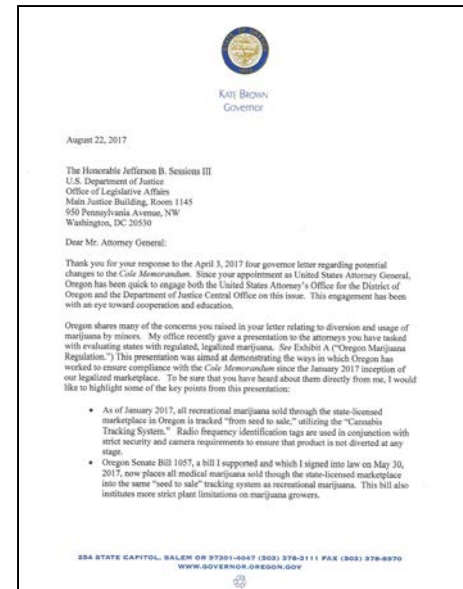
Think Out Loud

Fixing Oregon's black market marijuana problems

August 23, 2017

Gov. Kate Brown has been exchanging letters with U.S. Attorney General Jeff Sessions about Oregon's marijuana market.

Rob Bovett, legal counsel for the Association of Oregon Counties, who has been involved in crafting Oregon's legal policies around marijuana, joins us to explain what the state is doing to make sure cannabis grown for the medical market doesn't make its way onto the black market.



<http://www.opb.org/radio/programs/thinkoutloud/segment/kicker-immigration-legal-help-in-eugene-god-squad/>

The Feds and Oregon

The Oregonian

Oregon reels after Sessions rescinds policy that allowed legal marijuana to flourish

January 4, 2018

By The Oregonian Staff and wire reports

WASHINGTON -- Attorney General Jeff Sessions on Thursday rescinded the Obama-era policy that had paved the way for legalized marijuana to flourish in states such as Oregon, a move that sent shockwaves through the local cannabis industry.

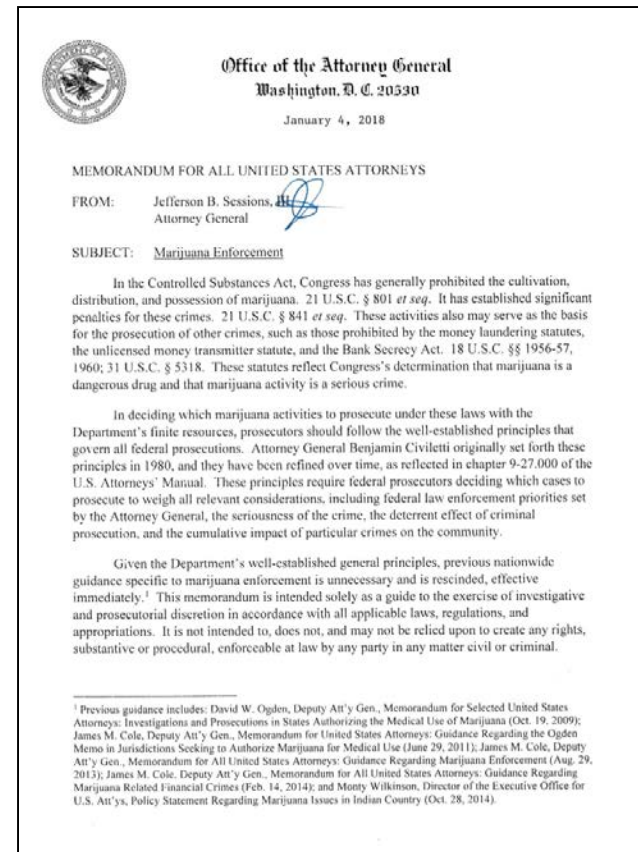
The Justice Department decision, outlined in a three-paragraph memo, will instead let federal prosecutors where pot is legal decide how aggressively to enforce federal marijuana law.



www.oregonlive.com/marijuana/index.ssf/2018/01/sessions_to_rescind_policy_tha.html

The Sessions Memo

- Revokes the Cole, Ogden, and Wilkinson Memos
- Defaults to standard federal drug prosecution criteria
- Hence each US Attorney decides, within usual federal criteria



The Feds and Oregon

The Oregonian

Oregon's top federal prosecutor reserving judgment on Sessions' pot memo

January 5, 2018

By Noelle Crombie



U.S. Attorney Billy Williams on Friday said he's troubled by the overproduction of marijuana in Oregon and the black market exportation of the crop to other states, though he declined to detail how his office will carry out a new federal directive stripping legal protections for marijuana businesses.

In his first public comments since Thursday's announcement by the U.S. Department of Justice, Williams told The Oregonian/OregonLive that he's awaiting additional guidance from federal officials. He offered a cautious response, saying he doesn't "believe in overreacting."

http://www.oregonlive.com/marijuana/index.ssf/2017/06/oregons_top_federal_prosecutor.html

The Feds and Oregon

The Oregonian

OP ED

U.S. Attorney: A call for transparency and action on marijuana

January 12, 2018

Earlier this month, Attorney General Jeff Sessions issued a memorandum rescinding existing Justice Department guidance on marijuana enforcement. The move gives U.S. Attorneys wide latitude to develop district-specific strategies and deploy department resources without Washington, D.C. artificially declaring some cases off limits. Before developing a strategy for Oregon, however, we need more information from the state.

Here's what we know right now.

Oregon has a massive marijuana overproduction problem. In 2017 alone, postal agents in Oregon seized 2,644 pounds of marijuana in outbound parcels and over \$1.2 million in cash. For comparison, postal agents in Colorado seized just 984 pounds of marijuana during a four-year period beginning in 2013.

Overproduction creates a powerful profit incentive, driving product from both state-licensed and unlicensed marijuana producers into black and gray markets across the country. This lucrative supply attracts cartels and other criminal networks into Oregon and in turn brings money laundering, violence, and environmental degradation.

http://www.oregonlive.com/opinion/index.ssf/2018/01/us_attorney_a_call_for_transpa.html

The Feds and Oregon

A survey of recent federal cases in Oregon illustrates alarming trends: in the last six months, federal agents and port police have seized over \$1 million in cash linked to marijuana transactions passing through Portland International Airport; law enforcement partners from 16 states have reported marijuana seizures from Oregon. In the first half of 2017, in-state production of butane hash oil resulted in six separate lab explosions. And police and sheriff deputies regularly encounter vehicles with hundreds of pounds of marijuana on highways heading out of state.

We also know that even recreational marijuana permitted under state law carries ill-effects on public health and safety, as Colorado's experience shows. Since 2013, marijuana-related traffic deaths have doubled in Colorado. Marijuana-related emergency and hospital admissions have increased 35 percent. And youth marijuana use is up 12 percent, 55 percent higher than the national average. We must do everything in our power to avoid similar trends here in Oregon.

As U.S. Attorney, I have traveled throughout the state to meet with community leaders and citizens to discuss distinctive issues facing rural Oregonians. Many of these conversations quickly turn to marijuana. Landowners throughout central and southwestern Oregon have legitimate concerns that marijuana cultivation has had a detrimental effect on water rights, public lands and livability.

Rural communities simply do not have the resources to fund the additional police and sheriff deputies needed to address these issues. While state officials have allocated a portion of marijuana tax revenues to public safety organizations including the Oregon State Police, the net effect on enforcement remains an open question. Moreover, can 20 Oregon Liquor Control Commission marijuana enforcement specialists adequately police thousands of recreational licensees?

http://www.oregonlive.com/opinion/index.ssf/2018/01/us_attorney_a_call_for_transpa.html

The Feds and Oregon

We don't know the answer to these questions, in part, because the state has yet to release a final version of its report evaluating out-of-state diversion, distribution to minors, cultivation on public land and violent crime associated with marijuana in Oregon. We need this information to move forward smartly, effectively, and transparently.

In sum, I have significant concerns about the state's current regulatory framework and the resources allocated to policing marijuana in Oregon.

Congress's judgment on marijuana activity is reflected in the Controlled Substances Act. Before charting a path forward for the enforcement of marijuana in Oregon, we must see how the state mitigates the public safety and health issues raised here. The time for informed action is now.

In the coming days, I will send invitations to federal, state, local and tribal law enforcement, public health organizations, Oregon marijuana interests and concerned citizen groups to attend a summit to address and remedy these and other concerns.

This summit and the state's response will inform our federal enforcement strategy. How we move forward will depend in large measure on how the state responds to the gaps we have identified. Until then it would be an inappropriate abdication of my duties to issue any blanket proclamations on our marijuana enforcement strategy in light of federal law. Billy J. Williams is the United States Attorney for the District of Oregon.

National policy has changed, but our commitment to exercising good judgment in charging decisions has not. We will continue to look at cases individually and assess whether charges are appropriate considering the best needs of our community.

Billy J. Williams is the United States Attorney for the District of Oregon.

http://www.oregonlive.com/opinion/index.ssf/2018/01/us_attorney_a_call_for_transpa.html

Federal Marijuana Summit

- Friday, February 2, 2018, US Courthouse



Enforcement resources



2. Local Regulation and NIMBY

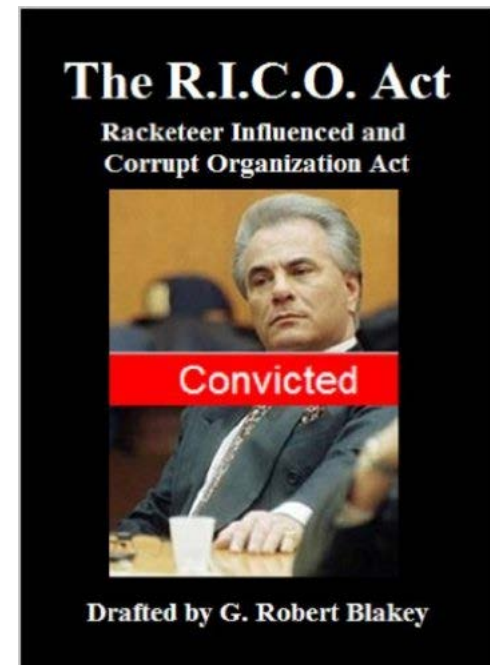
- TPMs and land use



RICO

- **RICO Cases**

- Racketeer Influenced and Corrupt Organizations Act
18 USC §§ 1961-1968
 - Enacted in 1970 as Title IX of the
Organized Crime Control Act of 1970
 - Criminal
 - Including forfeiture
 - Civil
 - Injunctive relief
 - Treble damages
 - Attorney fees



Colorado

- **RICO Cases - Example**

- ***New Vision Hotels v Medical Marijuana of the Rockies***

- 15-cv-350 (D Colo, Feb 19, 2015)

- Plaintiff: Owns Holiday Inn, Frisco, Colorado
 - Defendants: Owners of Summit Marijuana dispensary planning to open retail, and business partners (property owner, construction contractor, bank, bonding company, accountant)



Case 1:15-cv-00350 Document 1 Filed 02/19/15 USDC Colorado Page 1 of 31

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-350

SAFE STREETS ALLIANCE and NEW VISION HOTELS TWO, LLC,
Plaintiffs,

v.

MEDICAL MARIJUANA OF THE ROCKIES, LLC, GERALD JAY OLSON, THE
MANAGERS, INC, ROBERT L. HAUSSMAN, CHRISTINE VOUTOUR, DAVID KATZ,
JOHN DOE I, DIRK FOWLER, BANK OF THE WEST, MERCHANTS BONDING CO.,
ACCOUNTING SPECIALISTS, INC., AND MICHAEL MASSA,
Defendants.

COMPLAINT

Colorado

Racketeering lawsuits target Colorado marijuana industry

Two lawsuits represent a new approach, putting pinch not only on pot shops, but also landlords, banks, accountants and other ancillary businesses — and it has led to the closure of one of the marijuana businesses

Monday, July 13, 2015

By Kristen Wyatt, Associated Press

A federal law crafted to fight the mob is giving marijuana opponents a new strategy in their battle to stop the expanding industry: racketeering lawsuits.

A Colorado pot shop recently closed after a Washington-based group opposed to legal marijuana sued not just the pot shop but a laundry list of firms doing business with it — from its landlord and accountant to the Iowa bonding company guaranteeing its tax payments. One by one, many of the plaintiffs agreed to stop doing business with Medical Marijuana of the Rockies, until the mountain shop closed its doors and had to sell off its pot at fire-sale prices.

Oregon?

The Oregonian

Neighbors in Colorado can sue pot grower for stinky smells, federal appeals court rules

June 7, 2017

By Associated Press

DENVER -- A pot farm's neighbor can sue them for smells and other nuisances that could harm their property values, a federal appeals court ruled Wednesday.

The 10th U.S. Circuit Court of Appeals ruling revives a lawsuit between a Colorado horse farm and a neighboring marijuana-growing warehouse.



http://www.oregonlive.com/today/index.ssf/2017/06/neighbors_in_colorado_can_sue.html

Oregon

The Oregonian

Beavercreek property owners file racketeering suit against neighbors growing marijuana

July 5, 2017

By Maxine Bernstein

Two Beavercreek property owners are relying on a federal law usually reserved to fight organized crime to sue their neighbors, contending the people next door are engaged in racketeering by producing and selling marijuana.

Rachel McCart and Erin McCart, who own about 11 acres of fenced pastures and woodland off South Highland Crest Drive, say the operation harms their quality of life and diminishes the value of their land.

Case 3:17-cv-00927-AC Document 1 Filed 06/13/17 Page 1 of 61

1 Rachel Kosmal McCart, OSB #091303
Email: Rachel@equinelegalsolutions.com
2 Equine Legal Solutions, PC
24150 S. Highland Crest Dr.
3 Beavercreek, OR 97004
Telephone: (866) 385-2972
4 Fax: (503) 343-0680

5 Of Attorneys for Plaintiffs Rachel McCart and Erin McCart

6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF OREGON
9 PORTLAND DIVISION

10 RACHEL MCCART and ERIN)
MCCART,) No.
11)
12 Plaintiffs)
13 v.) COMPLAINT
14) For Violation of
15 CLIFFORD BEDDOW; CAROL) to 18 USC § 1962
BEDDOW; JEFFREY SIMONSON,)
16 HIDDEN ACRES REAL ESTATE, LLC;)
GOOD NEIGHBOR FARMS, LLC;)
17 DONALD KOPSHY; ANGELA KOPSHY;)
CHARLES NEAL; JAY HASER;)
18 GREENLAND HOLDINGS, INC.;)
HERBACEOUS FARMS, LLC; JOHN)
19 DININO; ROBERT DININO; MARY)
CROSS, aka MARY TINKLER, aka MARY)
20 TINKLER CROSS; GRAND, LLC;)
WILLIAMS, LLC; BCC HOLDINGS, LLC;)
21 DAVID ALPORT; CFA RETAIL, LLC;)
MICHAEL J. GENOVESE; DIVINE KIND,)
22 INC.; NITIN KHANNA; TIDEWATER)
RETAIL, INC.; TIDEPOL OREGON)
CITY, INC.; TIDEPOL CORVALLIS,)
INC.; TIDEPOL EAST, INC.;)
TIDEPOL MILWAUKIE, INC.;)
TIDEPOL NORTHEAST, INC.;)

Page 1 --COMPLAINT

Equine Legal Solutions, PC
24150 S. Highland Crest Dr.
Beavercreek, OR 97004
Telephone: (866) 385-2972
Fax: (503) 343-0680
Email: rachel@equinelegalsolutions.com

http://www.oregonlive.com/pacific-northwest-news/index.ssf/2017/07/beavercreek_couple_files_racke.html

AOC

Association of
Oregon Counties

Questions?

