REPORT OF THE
CHIEF LEGISLATIVE ANALYST

DATE: May 15, 2013

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Gerry F. Miller
Chief Legislative Analyst

Council File No: 13-0002-S36
Assignment No: 13-03-0180

SUBJECT: HR 710 - Affirmative Defense of Medical Marijuana

CLA RECOMMENDATION: Matters such as those pertaining to a City position on legislation which would legalize the use of medical cannabis, is a policy decision subject to the sole discretion of the City Council.

SUMMARY

Resolution (Parks-Perry) indicates, in part, that H.R. 710 (Farr), otherwise known as the "Truth in Trials Act" seeks to amend the United States Code to allow a defendant who is charged with a marijuana-related offense to establish an "affirmative defense," which would exempt them of charges related to marijuana use for medial purposes, as long as said individual was in full compliance of State law. The subject Resolution also states that H.R. 710 further blurs the line between State and Federal laws and that Government Codes of States such as California, stipulate that no legislative body of the State may pass ordinances in conflict with the Constitution and laws of the United States. Therefore, the Resolution advocates that the City oppose H.R.710.

BACKGROUND

H.R. 710 (Farr) would amend Title 18 of the United States Code, by striking section 3436, and inserting language which would allow any person facing prosecution or a proceeding for a marijuana-related offense under any Federal law, to submit evidence to prove that the marijuana possession was for medical purposes and was in compliance of State law. The bill refers to this as establishing an "affirmative defense." Should the court find that the defendant's marijuana activity was performed primarily for medical purposes, then the defendant would not be found guilty for any marijuana activities used for medical purposes under State law; however, the defendant would be subject to prosecution for any non-medical activities performed for non-medical purposes. Further, H.R. 710 states that any seized property in connection with the medical use of marijuana would be returned to the owner not later than 10 days subsequent to the finding of the court. Lastly, the bill stipulates that no plant may be seized under any Federal law, if said plant is being grown or stored per the recommendation by a physician or an order of a State or municipal agency, if in compliance with State law.

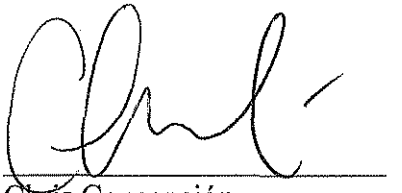
Critics of H.R. 710 maintain that marijuana is classified by the Food and Drug Administration (FDA) and the Drug Enforcement Agency (DEA) as a Schedule I drug, per the Controlled

Substances Act, because it meets all three criteria for classification: marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and has a lack of accepted safety for use under medical supervision. Since it has been determined to have no accepted medical uses, even under medical supervision, it is necessary that individuals continue to follow existing Federal law, and thereby should not be exempted from any legal proceeding, per opponents of the bill.

Proponents of H.R. 710 indicate that the ability to establish an affirmative defense in a legal proceeding proving legal medical use of marijuana, according to State law, should be supported. Although the FDA and DEA continue to stand by the Schedule I classification, proponents argue that both agencies have clearly ignored sound medical evidence that proves otherwise. In 1999, a report of the Institute of Medicine held that marijuana's active components are potentially effective in treating pain, nausea, anorexia associated with AIDS, and other symptoms, and should be tested rigorously in clinical trials. Reportedly, the FDA has not responded to the results of this study and similar medical studies, and therefore, proponents argue that any statement by the FDA and DEA that marijuana strictly meets the criteria for classification as one of the most dangerous substances with no known safe medical uses and an no known effective uses for medical conditions, cannot be validated.

BILL STATUS

2/14/13	Introduced
2/14/13	Referred to House Judiciary Committee



Chris Concepción
Analyst

Attachments: 1. Resolution (Parks-Perry)
2. H.R. 710

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, H.R. 710 (Farr), otherwise known as the "Truth in Trials Act," would amend Title 18 of the United States Code, by striking section 3436 and inserting language which would allow any person facing prosecution for violation of any Federal law with regard to a marijuana-related offense to have the ability to establish an "affirmative defense" by providing evidence that any related possession or distribution of marijuana was for medical purposes only, and was in full compliance of State law; and

WHEREAS, under the aforementioned amendment, any cannabis seized in connection with said proceedings shall be returned to the defendant, subsequent to notification of the Attorney General; and

WHEREAS, not only does the proposed amendment further blur the line between State and Federal laws relative to the manufacture, possession, and distribution of marijuana, but it would be one of the first actions to violate other United States laws such as the Controlled Substances Act, creating additional ambiguity for local jurisdictions which attempt to regulate marijuana distribution; and

WHEREAS, currently, despite its alleged therapeutic uses, marijuana is listed as a Schedule I drug/chemical (as listed in the Controlled Substances Act), which makes this substance subject to federal control and additionally stipulates that there is no currently accepted medical use allowed; and

WHEREAS, pursuant to California Government Code Section 37100, a city's "legislative body may pass ordinances not in conflict with the Constitution and laws of the state or the United States;" and

WHEREAS, given the evident conflict in Federal and State laws with regard to the manufacture, possession, and distribution of cannabis even for medical purposes, it is imperative that as a local government, the City of Los Angeles uphold Federal law by taking action to oppose any measure, such as H.R. 710, which would be antithetical to existing Federal regulations;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 Federal Legislative Program, OPPOSITION to H.R. 710 (Farr) which would amend Title 18 of the United States Code, to provide an affirmative defense for the medical use of marijuana in accordance with the laws of various states, and for other purposes.

PRESENTED BY: Bernard C. Parks
BERNARD C. PARKS
Councilmember, 8th District

MAR 5 2013

SECONDED BY: _____

cc

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

113TH CONGRESS
1ST SESSION

H. R. 710

To amend title 18, United States Code, to provide an affirmative defense for the medical use of marijuana in accordance with the laws of the various States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2013

Mr. FARR (for himself, Mr. ROHRABACHER, Mr. BLUMENAUER, Mr. COHEN, Mr. GRIJALVA, Ms. LEE of California, Mr. MORAN, Ms. PINGREE of Maine, Mr. POLIS, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 18, United States Code, to provide an affirmative defense for the medical use of marijuana in accordance with the laws of the various States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Trials Act".

SEC. 2. PROVIDING AN AFFIRMATIVE DEFENSE FOR THE MEDICAL USE OF MARIJUANA; SEIZURE OF PROPERTY.

(a) IN GENERAL.—Chapter 221 of title 18, United States Code, is amended by striking section 3436 and all that follows through the end of the chapter and inserting the following:

"§ 3436. Affirmative defense for conduct regarding the medical use of marijuana; seizure of property

"(a) Any person facing prosecution or a proceeding for any marijuana-related offense under any Federal law shall have the right to introduce evidence demonstrating that the marijuana-related activities for which the person stands accused were performed in compliance with State law regarding the medical use of marijuana, or that the property which is subject to a proceeding was possessed in compliance with State law regarding the medical use of marijuana.

"(b)(1) It is an affirmative defense to a prosecution or proceeding under any Federal law for marijuana-related activities, which the proponent must establish by a preponderance of the evidence, that those activities comply with State law regarding the medical use of marijuana.

"(2) In a prosecution or a proceeding for a marijuana-related offense under any Federal criminal law,

should a finder of fact determine, based on State law regarding the medical use of marijuana, that a defendant's marijuana-related activity was performed primarily, but not exclusively, for medical purposes, the defendant may be found guilty of an offense only corresponding to the amount of marijuana determined to be for nonmedical purposes.

"(c) Any property seized in connection with a prosecution or proceeding to which this section applies, with respect to which a person successfully makes a defense under this section, shall be returned to the owner not later than 10 days after the court finds the defense is valid, minus such material necessarily destroyed for testing purposes.

"(d) Any marijuana seized under any Federal law shall be retained and not destroyed pending resolution of any forfeiture claim, if not later than 30 days after seizure the owner of the property notifies the Attorney General, or a duly authorized agent of the Attorney General, that a person with an ownership interest in the property is asserting an affirmative defense for the medical use of marijuana.

"(e) No plant may be seized under any Federal law otherwise permitting such seizure if the plant is being grown or stored pursuant to a recommendation by a physi-

cian or an order of a State or municipal agency in accordance with State law regarding the medical use of marijuana.

"(f) In this section, the term State includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 221 of title 18, United States Code, is amended by striking the item relating to section 3436 and all that follows through the end of the table and inserting the following new item:

"3436. Affirmative defense for conduct regarding the medical use of marijuana; seizure of property.".

○