UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. RHONDA LEE FIRESTACK-HARVEY (1), LARRY LESTER HARVEY (2), MICHELLE LYNN GREGG (3), ROLLAND MARK GREGG (4), and JASON LEE ZUCKER (5), Defendants.	NO: 13-CR-0024-TOR-1 13-CR-0024-TOR-2 13-CR-0024-TOR-3 13-CR-0024-TOR-4 13-CR-0024-TOR-5 ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS

BEFORE THE COURT are Defendant Harvey's Motion to Dismiss and/or Enjoin Prosecution and Other Relief (ECF No. 541), Defendants' Motion to Dismiss as Required by Act of Congress (ECF No. 553), and Defendants' Motion for Reconsideration of Order (ECF No. 554). These motions were heard on February 12, 2015, at the parties' pretrial conference. The Court has reviewed the record and the files therein, heard from counsel, and is fully informed.

BACKGROUND

In August 2012, state and federal law enforcement officials executed a state search warrant at Defendants Rhonda Firestack-Harvey and Larry Harvey's property, asserting probable cause that marijuana with no medicinal purpose was being grown illegally. At the time of the search, Ms. Firestack-Harvey presented five authorizations to grow medical marijuana. During the search, officers discovered harvested marijuana, 74 marijuana plants, a scale, packaging material, firearms, and records evidencing drug transactions. The United States asserts these records indicate that Defendants possessed more than 72 ounces at one time, participated in a marijuana grow operation with more than 10 people, and sold this marijuana to people not part of the "collective garden."[1] As such, the United States

[1] Under Washington's Medical Use of Cannabis Act ("MUCA"), a qualifying patient—that is, a person who has been diagnosed by a health care professional with a terminal or debilitating disease—may possess no more than 15 cannabis plants and 24 ounces of useable cannabis. RCW 69.51A.040(1). MUCA also authorizes "collective gardens." A collective garden, comprised of no more than 10 qualifying patients, may possess no more than 45 plants and 72 ounces of useable cannabis. RCW 69.51A.085(1). No useable marijuana from the collective garden can be delivered to anyone other than a member of the collective garden. *Id.*

contends that Defendants were engaged in a for-profit marijuana business in violation of both state and federal law.

On May 6, 2014, a Grand Jury issued a Superseding Indictment, charging all five defendants with the following: Conspiracy to Manufacture and Distribute 100 or More Marijuana Plants, Manufacture of 100 or More Marijuana Plants, Distribution of Marijuana, Possession of a Firearm in Furtherance of a Drug Trafficking Crime, and Maintaining Drug-Involved Premise. ECF No. 322. Trial for this matter is currently set to begin on February 23, 2015. ECF No. 527.

On December 16, 2014, President Obama signed the 2015 fiscal year appropriations bill. This legislation included the following rider:

> **None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of** Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, **Washington** and Wisconsin, **to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana**.

Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130 (2014) (emphasis added).

In the instant motions, Defendants move the Court to dismiss this action or otherwise enjoin prosecution in light of the recent appropriations bill and its

accompanying rider limiting the Department of Justice's use of funds for the 2015 fiscal year. ECF Nos. 541, 553.

DISCUSSION

When determining whether an appropriations rider repeals or modifies an existing law, courts focus on the language of the rider. *Envtl. Def. Ctr. v. Babbitt*, 73 F.3d 867, 871 (9th Cir. 1995). The Supreme Court has held that "[w]hen a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning." *Smith v. United States*, 508 U.S. 223, 228 (1993). To determine a word's plain and ordinary meaning, the court may refer to standard English language dictionaries. *See id*. at 228–29; *United States v. Carona*, 660 F.3d 360, 367 (9th Cir. 2011). Unless the language is unclear, the court should not resort to legislative history as an interpretative device. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("Judicial investigation of legislative history has a tendency to become . . . an exercise in 'looking over a crowd and picking out your friends.'") (citation omitted).

When interpreting statutory language, courts have long recognized the cardinal rule that "repeals by implication are not favored." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 189 (1978) (quoting *Morton v. Mancari*, 417 U.S. 535, 549 (1974)). "In practical terms, this 'cardinal rule' means that 'in the absence of some affirmative showing of an intention to repeal, the only permissible justification for

a repeal by implication is when the earlier and later statutes are irreconcilable.'" *Id.* at 190 (quoting *Mancari*, 417 U.S. at 550). "This rule 'applies with even greater force when the claimed repeal rests solely in an Appropriations Act.'" *Envtl. Def. Ctr.*, 73 F.3d at 871 (quoting *Tenn. Valley Auth.*, 437 U.S. at 190).

Defendants' motions urge this Court to find that the recent passage of the appropriations bill and its accompanying rider constitutes an implied repeal or modification of federal prosecutorial authority under the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, at least insofar as it applies to prosecution of medical marijuana use in states authorizing such practices. According to Defendants, this provision prohibits the Department of Justice from prosecuting *any* medical marijuana patients in the 32 states that have their own regulatory schemes, whether or not the federal government views the person as operating in compliance with the state's medical marijuana law.

This Court finds the plain language of the appropriations rider to be clear. The Department of Justice is prohibited from spending 2015 fiscal year funds to "*prevent* [the listed] States from *implementing* their own State laws that *authorize* the use, distribution, possession, or cultivation of medical marijuana." Pub. L. No. 113-235, § 538, 128 Stat. 2130 (emphasis added). The operative words under the rider are prevent, implement, and authorize. Black's Law Dictionary defines "prevent" as "[t]o hinder or impede," and "authorize" as "to formally approve; to

sanction." Black's Law Dictionary 142, 1226 (8th ed. 2004). The Oxford English Dictionary defines the verb form of implementation, "implement," as "[t]o complete, perform, carry into effect" or "to fulfil." 7 Oxford English Dictionary 722 (2d ed. 1989).

Focusing on the plain language of the appropriations rider, the Department of Justice cannot use 2015 fiscal year funds to hinder or impede a state's fulfillment of its laws sanctioning or approving the use, distribution, possession, or cultivation of medical marijuana. Conversely, this rider does not disallow federal use of funds to prosecute persons who are *not* in compliance with their state's medical marijuana laws because such prosecution does not interfere with sanctioned conduct and otherwise remains illegal under federal law. Moreover, this limitation applies only to the Department's use of 2015 fiscal year funds. Considering the strong policy against repeal by implication, paired with the plain language of the appropriations rider, federal prosecutorial authority under the CSA remains in effect. Accordingly, while this Court acknowledges the plain language of the rider prevents the Department of Justice from using its 2015 fiscal year funds in a manner that interferes with certain conduct *sanctioned* by state medical marijuana laws, this Court declines to extend its limited language to further modify or limit the reach of federal prosecutorial authority under the CSA.

As applied here, the appropriations rider does not shield Defendants from federal prosecution. Although Defendants attempt to frame this prosecution as merely one of medical marijuana patients, the United States has proffered evidence to demonstrate that Defendants were operating a for-profit marijuana business—conduct outside the parameters of MUCA. According to the United States, the records obtained from the search evidence the sale of marijuana to persons other than qualifying patients participating in the oversized collective garden. Because such conduct is not authorized or sanctioned by Washington's medical marijuana laws, even considering available affirmative defenses, the United States is not prevented from using funds to prosecute this conduct under the recent appropriations rider. Accordingly, Defendants' motions to dismiss (ECF Nos. 541, 553) are **DENIED**.

Based on the appropriations rider, Defendants also seek reconsideration of the Court's Order at ECF No. 337, which precludes the introduction of evidence of alleged compliance with MUCA. As explained above, the appropriations rider prohibiting the Department of Justice from spending 2015 fiscal year funds neither prevents this prosecution, nor makes Defendants' alleged compliance with MUCA relevant here. Defendants' motion for reconsideration of this Court's Order at ECF No. 337 is **DENIED**.

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IT IS HEREBY ORDERED:

1. Defendant Harvey's Motion to Dismiss and/or Enjoin Prosecution and Other Relief (ECF No. 541) is **DENIED**.

2. Defendants' Motion to Dismiss as Required by Act of Congress (ECF No. 553) is **DENIED**.

3. Defendants' Motion for Reconsideration of Order (ECF No. 554) is **DENIED**.

The District Court Executive is directed to enter this order and provide copies to counsel.

DATED February 12, 2015.

THOMAS O. RICE
United States District Judge