

Legal battle looms in states approving use of recreational pot

By Sari Horwitz, Washington Post

The approval of ballot initiatives legalizing recreational marijuana use in Washington state and Colorado on Tuesday could set the stage for a significant legal battle with the Justice Department, one that may bring fresh scrutiny to federal drug policy.

On Wednesday, the Justice Department said it was reviewing the initiatives but would not comment further on how it would respond to the first attempt by any state to legalize marijuana for reasons other than medicinal purposes. A spokeswoman for the Drug Enforcement Agency said that its “enforcement of the Controlled Substances Act remains unchanged.”

The ballot initiatives in Colorado and Washington state are a step beyond the measures that have legalized marijuana for medicinal purposes in the District and 17 states, including Massachusetts, which passed such an initiative Tuesday.

In the run-up to the latest initiatives, the Justice Department was unusually muted about the possible conflicts between federal and state laws, even as former DEA officials called on Attorney General Eric H. Holder Jr. to publicly oppose the measures.

On Wednesday, Democratic Colorado Gov. John Hickenlooper signaled his awareness of the legal conflict with the Justice Department, cautioning voters that the marijuana initiative violates federal law.

"The voters have spoken and we have to respect their will," Hickenlooper said in a statement. "This will be a complicated process, but we intend to follow through. That said, federal law still says marijuana is an illegal drug, so don't break out the Cheetos or gold fish too quickly."

Colorado Amendment 64 allows individuals 21 and older to buy up to an ounce of marijuana at retail stores that are regulated. Possession of marijuana would be legal, although it would not be legal to use the drug publicly. Washington's Initiative 502 is similar and allows adults 21 and older to buy up to an ounce of dried marijuana; up to a pound of a marijuana-infused product, such as brownies; or up to 72 ounces of marijuana-infused liquids.

Supporters of the measures argued that they would bring in hundreds of millions of dollars in tax revenue, with the funds being used for education, health care and other government services. They also said that the initiatives would give proponents a chance to show that decriminalization of marijuana could benefit the country's war on drugs.

In Colorado, the measure was supported by more than 300 physicians in the state, including Bruce Madison, the former associate medical director of faculty at the University of Colorado School of Medicine, who said that current laws waste "hundreds of millions of dollars in a failed war on marijuana, by ruining thousands of lives by unnecessary arrest and incarceration, and by causing the deaths of hundreds of people killed in black-market criminal activities."

Opponents of the measures in both states warned of a federal crackdown and unauthorized drug use by children. They also argued that the states could attract "drug tourists."

A similar proposal legalizing marijuana use was on the ballot in Oregon but did not pass.

In September, nine former DEA administrators wrote a letter to

Holder expressing their concerns about the initiatives. The attorney general did not respond.

“To continue to remain silent conveys to the American public and the global community a tacit acceptance of these dangerous initiatives,” wrote the former administrators, who oversaw the DEA under both Democratic and Republican presidents from 1973 to 2007. “We urge you to take a public position on these initiatives as soon as possible.”

The Justice Department can file suit to try to block state laws that it deems to have violated federal statutes. It did so, for example, after Arizona passed a law in 2010 that the state said was aimed at cracking down on illegal immigrants but that the Obama administration believed was unconstitutional.

On Wednesday, Justice spokeswoman Nanda Chitre would not comment on whether a lawsuit is being considered. “The Department of Justice is reviewing the ballot initiatives, and we have no additional comment at this time,” Chitre said.