

NATIONAL REVIEW

Jeff Sessions's Wrong Turn on Marijuana

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January 8, 2018

Back in November 2016, I wrote about my concerns about Senator Jeff Sessions becoming the next attorney general. One of my main concerns was that he may decide to use (or abuse) federal powers in order to enforce his backward views on marijuana legalization. Sadly, I was right to be worried.

As marijuana grows into a multimillion dollar industry, Attorney General Jeff Sessions aims to impose harsher federal regulations. AP News reports that Sessions plans to rescind an Obama-era policy that allows states to gradually legalize marijuana for recreational use, giving federal prosecutors free reign in targeting buyers and sellers. Sources confirmed Sessions' decision to other media outlets.

Before I begin, I would note that as much as I dislike this decision, the AG is well within his rights to change course. Cato Institute's Trevor Burrus reminds us:

While Sessions is misguided in his antiquated, if not antediluvian, views on marijuana, he's not wrong that, under current law, Congress has prohibited marijuana use everywhere in the country for any reason. In fact, federal law regards marijuana as one of the most dangerous drugs in the world.

Federal marijuana law goes back to the Marijuana Tax Act of 1937, but the modern prohibition began with the Controlled Substances Act of 1970. That act defined marijuana as a Schedule I drug, meaning that it has no accepted medical uses and has a high potential for abuse. Despite advances in our understanding of the medical benefits of marijuana, and despite 29 states having legalized medical marijuana in some form, federal law treats marijuana as dangerous as heroin. In fact, cocaine, which has accepted medical uses, is a Schedule II drug.

That is obviously ridiculous, yet it's the law. And, as long as it's the law, Sessions will be allowed to enforce it anyway he wants.

Yet, there are many reasons to be puzzled by the move and to disapprove of it. Oh and by the way, you don't have to be a pot user — or even approve of pot use — to be critical of the decision. Being a conservative, a free-marketer, a Republican, or a rational politician will do.

Session's decision goes against a basic belief in federalism and in the idea that states should be allowed to make decisions outside of federal control on a variety of issues — including legalizing marijuana. George Mason University law professor Ilya Somin explains how this decision is an assault on federalism, and more. A tidbit:

Like his asset forfeiture policy and his attack on sanctuary cities, Sessions' effort to target marijuana in states that have legalized it is an assault on constitutional federalism, as well as a terrible policy. It undermines state autonomy on a policy issue where there is little, if any justification for federally imposed uniformity. Admittedly, as Damon Root points out, the policy is consistent with a series of dubious Supreme Court decisions. The most notable is in *Gonzales v. Raich* (2005), which held that Congress's power to regulate interstate commerce allows it to ban the possession of medical marijuana that had never been sold in any market or crossed state lines. *Raich* is a terrible decision that principled conservatives — and others who care about enforcing constitutional limits on government power — should be trying to overrule. They should not be exploiting it to impose federal prohibition on unwilling states.

Session's move also goes against a statement made by candidate Donald Trump during the campaign that he wouldn't support such changes because he is "a state guy." Here is more:

In a television interview on July 29, 2016 with KUSA-TV in Colorado, Trump said: "I wouldn't do that [using federal authority to shut down recreational marijuana], no . . . I wouldn't do that . . . I think it's up to the states, yeah. I'm a states person. I think it should be up to the states, absolutely."

In a radio interview with WWJ Newsradio 950 in Michigan on March 8, 2016, Trump said "I think it certainly has to be a state — I have not smoked it — it's got to be a state decision . . . I do like it, you know, from a medical standpoint . . . it does do pretty good things. But from the other standpoint, I think that it should be up to the states."

It goes against the will of the nearly 70 million of Americans living in states that have voted to legalize marijuana.

It goes against the will of a vast majority of Americans that the federal government should stay out of the states' business on this issue. Michelle Minton of CEI writes:

According to recent polls, as many as 88 percent of Americans say they now approve of legalizing medical marijuana. While only 49 percent support recreational pot, many more — 71 percent — also don't want the feds to interfere with states that choose to legalize this form of marijuana use.

It actually goes against the will of a majority of Americans, including Republicans, who believe marijuana should be legal:

Overall, 64 percent of those reached by Gallup said they support the legalization of marijuana, up 4 percentage points from October 2016. The percentage of Gallup respondents who support legalization has climbed consistently since 2012, when 48 percent of those polled said they supported it . . .

Of the Republicans reached by Gallup's poll, 51 percent said they support legalization, a 9-point increase relative to last year. It is the first time that a majority of Republicans have expressed support for marijuana legalization in Gallup polling.

It goes against the will of many lawmakers in Congress, including some Republican ones. Brian Darling writes:

Congress has shown its support for the right of a state to pass marijuana laws. In May 2014, Reps. Dana Rohrabacher (R-CA) and Sam Farr (D-CA) offered an amendment to prevent the Justice Department authority from prosecuting companies and individuals in states that have allowed medical marijuana to be legally distributed within that state. The House passed the amendment on a 219-189 vote, and 49 Republicans supported it. More evidence of an uprising against Sessions' is that one of his conservative allies, Sen. Cory Gardner (R-CO), promised to block all nominees to the Justice Department going forward due to Sessions' withdrawal of the Cole Memo.

It goes against the notion that people should be free to decide what is good (or bad) for them, particularly if that decision isn't hurting others. It goes against a belief shared by many that it is not the role of the government to tell people how they should live their lives and their faith that, if left on their own, the vast majority of adults will make the right decision for themselves — including the one to use a drug recreationally and in moderation.

So let's legalize Marijuana, already, if only because there are so many better ways to use the scarce resources of the Department of Justice. And indeed, because enforcement resources are scarce, the change from Washington may not have much impact on the ground, especially when prosecutors know that juries may not end up convicting. So, Sessions's directive introduced unnecessary uncertainties without much of an upside.

For more on this you can read [this analysis](#) from a conservative legal scholar at Vanderbilt University.