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Editorial: Feds' pot crackdown bad medicine

Obama Justice Department attack on medical marijuana puzzling, wrong.

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In the design of America's founders, the states are supposed to be centers of democratic experiment. They're not supposed to be uniform. For example, even though alcohol Prohibition ended in 1933, local laws restricting sales exist in 33 states. In Arkansas, more than half of 75 counties prohibit alcohol sales.

This design is why it is disturbing to us that the Obama administration has launched a crackdown on medical marijuana, which is legal in 16 states and the District of Columbia, the home of the federal government. California led the way with Proposition 215 in 1996, which passed with 56 percent of the vote. It allows a patient, according to state law, to use medical marijuana with a prescription from a medical doctor. The Register supported Prop. 215 in editorials, primarily written by our late colleague, Alan W. Bock.



There have been numerous controversies pitting medical marijuana users and dispensaries against state and local authorities. But overall, things have worked fairly well. The dire consequences of critics – of a state lost in a pot haze – never happened. In 2002, the California Supreme Court upheld Prop. 215. And when San Diego and San Bernardino counties challenged Prop. 215 in federal court, the U.S. Supreme Court declined to hear the case in 2009, allowing Prop. 215 to stand.

The Bush administration, despite cracking down in many areas of the "war on drugs," never seriously challenged Prop. 215 or other states' medical marijuana laws. There was great hope that the Obama administration would normalize the matter by formally letting states set their own policies. In 2006, Barack Obama admitted to using marijuana. "I inhaled frequently," he said in a televised interview. "That was the point."

In his 2008 campaign, Mr. Obama pledged, "I'm not going to be using Justice Department resources to try to circumvent state laws on this issue." After Mr. Obama became president, Deputy Attorney General David W. Ogden wrote in an Oct. 19, 2009, memo to U.S. attorneys in states that had legalized medical marijuana, "As a general matter, pursuit of these priorities should not focus federal resources in your states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law ... is unlikely to be an efficient use of limited federal resources."

Why the change? Jeffrey A. Miron, a Cato Institute scholar specializing in the economics of illegal drugs, said the Obama administration may be trying to offset its liberal image by "doing some things on the right," such as cracking down on drugs. "But this is alienating a lot of people in the middle, the independents."

"We saw this coming," Steve Kubby told us of the tougher stance by the Obama Justice Department. Mr. Kubby was a co-author of Prop. 215, and has used medical marijuana for more than 25 years to keep in remission an otherwise fatal form of adrenal cancer. Mr. Kubby disputes a 2005 Supreme Court decision, *Gonzales vs. Raich*, green-lighting a federal ban on medical marijuana on the basis of the Constitution's interstate commerce clause. He cites the 10th Amendment, which stipulates, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Given that medical marijuana is not mentioned in the Constitution, therefore, its regulation by the states is permitted, he contends.

However, he said that, in light of the Obama administration's crackdown, the next step in California is to pass an initiative in which the state "opts out of the Controlled Substances Act," the federal law under which the government is acting, effectively legalizing marijuana. He is working on the initiative with attorney Bill McPike and retired Orange County judge Jim Gray.

We mentioned this strategy to Mr. Miron. He said the Supreme Court might have to settle whether a state could opt out of the Controlled Substances Act. Under the initiative, marijuana would be regulated like wine. It would not be complete legalization, as would have happened under Proposition 19, which state voters narrowly defeated last November.

Just last week, the California Medical Association announced it has adopted a policy that recommends legalization and regulation of cannabis. The decision was based on a white paper concluding physicians should have access to better research, which is not possible under the current policy. The association is the largest physician group in California and the first statewide medical association to take this official position.

The federal government lists cannabis as a Schedule I drug. That classification restricts the research and ability to study the substance. Part of the CMA policy emphasizes that the drug should be rescheduled in addition to being legalized. "There simply isn't the scientific evidence to understand the benefits and risks of medical cannabis," CMA Chairman Paul Phinney, M.D., said in a statement.

We continue to believe that Prop. 215 was good medicine, and that medical marijuana should remain a state matter. Along with opium and other strong drugs that already are legal with a prescription, it should be part of a physician's medicine chest to treat patients.

The Obama administration should return to its original stance of noninterference in state medical marijuana policies. It should concentrate on the deficit, debt, high unemployment and the numerous ongoing wars, leaving other matters to the states. We'd also like to hear what the Republican presidential candidates would do on this issue. As to Mr. Kubby's new initiative, we'll check it out should it advance to a ballot.