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The Feds, the States and the Controlled Substances Act

How exactly is Colorado undermining federal law? Nothing requires a state to make marijuana illegal.

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David B. Rivkin and Elizabeth Price Foley have risen to the defense of the attorneys general of Nebraska and Oklahoma, who complain about spillover enforcement costs from Colorado's law legalizing marijuana and hence are asking the Supreme Court to declare that law unconstitutional (["Federal Antidrug Law Goes Up in Smoke,"](#) op-ed, Dec. 29). Along the way they respond to conservative charges of "fair-weather federalism" by pointing to President Obama's failure to enforce federal drug law in Colorado as the real problem. Yet the gravamen of their legal argument is that, under the Constitution's Supremacy Clause, federal law trumps conflicting state law, so even when the president won't enforce that law, states "may not pursue policies that undermine federal law," as policies in Colorado and three other states allegedly now do.

Do they? How exactly is Colorado undermining federal law? Mr. Rivkin and Ms. Foley cite Colorado's attorney general as saying that "his state is 'becoming a major exporter of marijuana.'" He was doubtless speaking loosely there. After all, the state isn't exporting marijuana. In essence, what the state has done is legalize the sale and use of marijuana—as if it had never made it illegal to begin with. Nothing requires a state to make marijuana illegal. Nor is the state doing anything to prohibit federal enforcement of federal prohibitions. It's doubtful, therefore, that there is any conflict here for the Supreme Court to notice.

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