



The Case For Allowing Interstate Trade Among Marijuana-Legal States

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March 13, 2019

Although marijuana has been illegal under the Controlled Substances Act since 1970, that will inevitably change. With two-thirds of the country currently in favor of legalizing recreational use—a remarkable shift, rivaled only by polling trends on same-sex marriage—Congress is beginning to read the smoke signals. Late last month, for example, Sen. Cory Booker (D-NJ) reintroduced the Marijuana Justice Act, which would legalize cannabis as a matter of federal law and expunge federal marijuana convictions.

It's important that lawmakers get national cannabis policy right, which means both respecting each state's prerogative to handle its own policy and allowing interstate marijuana trade among those states that legalize.

Currently, the 33 closed cannabis markets—that's how many states have legalized medical marijuana, 10 of which have also legalized recreational use, with New York about to become the 11th—suffer under extreme disequilibrium. Supply far outstrips demand in places like Oregon, where dispensaries are selling marijuana at record-low prices due to the growers' impressive crop yield.

In Nevada, however, medical marijuana patients don't have access to affordable products to ease their pain—it's hard to grow cannabis in the desert! It would be efficient and profitable for businesses in both states to simply ship Oregon's marijuana to Nevada. But interstate trade of marijuana is still very illegal.

What's worse, closed state borders create de facto cartels for existing businesses. The burdensome licensing process in states like California and Colorado already limits economic activity related to cannabis. Until this changes, only the most established and capitalized businesses will be able to successfully invest in future cannabis trade.

By default, to succeed, any business has to be vertically integrated from seed to sale in each state. This limits competition and artificially inflates prices. Consumers, particularly elderly patients, many of whom rely on cannabis products to mitigate health concerns, will be at the mercy of businesses that don't have to respond to market forces.

To look at it another way, one of the principal criticisms of Obamacare is that it doesn't allow the sale of exchange insurance plans across state lines. Well, such faux federalism applied to

cannabis policy suffers from the exact same deficiency: closed markets inflate both health insurance premiums and the price for premium bud.

Several bills now before Congress, like the Regulate Marijuana Like Alcohol Act, contemplate interstate trade and a national industry. A number of other proposals, like the RE|E|FER Act or the STATES Act, fall short of that promised goal even as they do well to respect state sovereignty. But a half a loaf won't do: Congress should only consider bills containing policy solutions that take into account both local preferences and an inevitably large and diverse national market.

After all, it's Congress's responsibility to reduce barriers to trade within the United States. Article I, Section 8, of the Constitution grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." This Commerce Clause was intended to create a national free trade zone, not to allow the feds to create massive market inefficiencies, or even to prohibit interstate commerce.

Congress's inability to deal with cannabis in a serious manner has put the U.S. market well behind competitors like Israel and Canada, both of whom have fully legalized marijuana but most importantly don't allow trade barriers between jurisdictions that have legalized.

Canadian investors, in particular, have used this dynamic to their advantage by buying marijuana businesses in the United States. And the institutionalized tobacco industry stands to gain at the expense of smaller cannabis entrepreneurs because it can afford to build the legal infrastructure the current regulatory landscape demands. Piecemeal legislation—inefficient government policies that prevent business capitalization and expansion—will only delay innovation and make small businesses more vulnerable in the long term.

Finally, social justice advocates like the Minority Cannabis Business Association have pointed out that none of the intrastate-focused proposals currently floating around Capitol Hill properly address the needs of minority communities. These are the ones who tend to be most hurt both by marijuana prohibition and by regulatory regimes that maintain incentives for gray and black markets to flourish.

It's high time for the federal government to allow Americans to sell cannabis to Americans. It's one of the few legislative possibilities that unites people across party lines, strengthening the economy by creating jobs and empowering entrepreneurs to do what they do best: provide American-grown and produced goods to those who want to buy them.

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