

Marijuana Federalism Could Pass in the New Congress

Beau Rothschild

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Not much is expected to be passed in a new congress with Democrats in control of the House and Republicans in control of the Senate. One issue that you would think would be popular is the idea of federalism in marijuana laws. Liberal Democrats have professed support for marijuana and Republicans have campaigned on the idea of federalism – this seems like an issue where bipartisanship is possible.

The bill that may be the vehicle for support is something called the STATES Act. This bill, introduced in June by Sens. Elizabeth Warren (D-Mass.) and Cory Gardner (R-Colo.), protects states that have consented to medical and adult use marijuana from federal prosecution. Gardner, Rand Paul (R-Ky.) and other conservatives in the Senate are expected to lead the effort to convince Republicans to restore federalism to the states, where the people can choose what they have access to. Republican Reps. David Joyce of Ohio, Ken Buck of Colorado, Justin Amash of Michigan and Thomas Massie of Kentucky will be the base of GOP support to get this legislation through the House. The legislation is expected to be introduced in the 116th Congress and may be the baseline for negotiations going forward.

Although marijuana is illegal under federal law, Congress has taken actions to protect states that have allowed medical marijuana. Reps. Dana Rohrabacher (R-Calif.) and Earl Blumenauer (D-Ore.) have attached language to appropriations bills this year preventing the federal government from prosecuting people and businesses in states that have allowed medical marijuana. This funding rider that defunds prosecutions has been law since 2014 and is expected to continue into the next Congress. Reps. Tom McClintock (R-Calif.) and Jared Polis (D-Colo.) — set to become the state's governor — pushed for a similar protection for adult-use states, yet that measure was blocked for a vote by Rep. Pete Sessions (R-Texas), who was defeated on Election Day. With new leadership in the Republican Party and the signaling of a more open process for appropriations bill in the House in the upcoming Congress, there is an opportunity to get a vote on that measure.

The November elections provided some evidence that Republican may want, as a party, to take a hard look at supporting federalism in marijuana laws for both medical and adult use. Referendums were held in the midterms with support for both medical and adult-use votes in Michigan, Utah and Oklahoma. In North Dakota, voters rejected adult use. These referendums support the idea that the states, not the federal government, are the proper place to make these decisions. Michigan supported adult use while North Dakota rejected a very expansive referendum. Utah and Oklahoma embraced medical marijuana, expanding the number of states that have allowed medical marijuana to 32 and the District of Columbia. The fact that a

majority of states are having votes and ignoring federal law on marijuana shows that the power in the traditional police power resides in the states.

Ilya Somin of the Cato Institute hit the nail on the head when he wrote in National Review on Aug. 18, “both the Left and the Right could benefit from a more principled commitment to limiting federal power. In a large and diverse nation, it is unlikely that we can find a workable, one-size-fits all approach to numerous contentious policy issues involving law enforcement, health care, and drug use, among others. This is especially true in an era of deep partisan polarization, when Democrats and Republicans are farther apart on most issues than they have been in decades.”

Limiting federal power was always an issue used by Republicans to promote the idea that they were the champions of a small federal government with a list of enumerated powers in the Constitution. Many Republicans have gone away from that idea when it comes to marijuana laws.

There is some area of potential bipartisanship on infrastructure, criminal justice reform and federalism in marijuana laws. The next Congress will be a good case study to see if the parties are capable of working together on issues where there is bipartisan agreement. When you can get the committed progressive Warren and the libertarian Paul on the same page on the STATES Act, one would think the issue of marijuana federalism is an area where the parties can agree.