



# The Time Has Come for a Transpartisan 'Repeal' Caucus

By Matt Welch

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First, undo government harm.

The federal government's decadeslong war on marijuana, one of the most life-mangling policies ever enacted, could be ended with a single sentence: *The Controlled Substances Act shall not apply to marijuana.*

Put it in a bill, vote on the bill, pass the bill, sign the bill, done. Much of the federal government's drug war law enforcement machinery would grind to a halt. No legislative horse-trading, no Christmas tree-style gifts to favored constituencies, no giving old bureaucracies new responsibilities. Just the simple and urgent removal of the legal justification for grievous government harm.

This elegant approach, redolent of the 21st Amendment's repeal of federal alcohol prohibition, is untenable to big-government lifers like Senate Majority Leader Chuck Schumer (D-N.Y.), as Jacob Sullum has repeatedly detailed in these pages. But it's the shortest line to a point where a supermajority of Americans want policy to be. And it's a template that could and should be used, at every level of government, by every flavor of politician.

The internet is filled with listicles (many of them dubiously sourced) of colorfully archaic states' laws, about bouncing pickles or pronouncing Arkansas. A handful of states have law-revision commissions that go hunting for such deadwood in the legal code.

But there are more pressing outrages on the books right now whose speedy removal would reduce state-sanctioned injustice and relieve some of the immiserations of centrally-planned folly. A cross-partisan caucus of politicians, staffers, activists, commentators, and other professionals in the disreputable world of politics could and should band together on a case-by-case basis, identifying bad and harmful laws and regulations on the books, and propose direct legislative repeals.

The "Repeal" Caucus could rally around existing legislation—like the Ending Federal Marijuana Prohibition Act, or the repeal of the 2002 Authorization for Use of Military Force (AUMF) against Iraq. It could make and popularize the consistent and compelling argument that these anachronistic laws are used to inflict tangible damage on human beings. And then having gained a few victories and built some muscle memory, Repealers could go on to explore the joys of bad-law removal across the superstructure of government.

Among the many laws and regulations ripe for the excision:

\* **The Jones Act**. A perennial libertarian target (oh look, here's another damning Cato Institute study from this week!), this protectionist 1920 law prohibits non-American ships from carrying cargo between two American ports, including far-flung islands in U.S. territories such as Hawaii and Guam. The result? Jacked up prices for basically all goods shipped to those destinations, including comparatively poor Puerto Rico. All to protect the builders and owners of fewer than 100 American ships.

Here, let's let Capt. Andrew Heaton explain.

\* Similarly, the **Foreign Dredge Act of 1906** requires dredging ships to be American-built/owned/manned, thereby making the dredging and improving of U.S. ports considerably more expensive for no good reason at all. Good thing we don't have a supply chain problem!

\* **The Justice Department's "Equitable Sharing" Program**. Most Americans are shocked when they discover that law enforcement can seize, pocket, and sell the money and property of people who are never even charged with a crime. They are more shocked still to learn that cops now seize more money and property through civil forfeiture than the amount Americans report being robbed.

As this odious and facially unconstitutional practice has finally come under public scrutiny, and helped produced a series of state-level bans on the practice, a third nasty surprise has come: State and local law enforcement can circumvent bans by partnering with the Justice Department, which then allows "equitable sharing" of the ill-gotten booty with the money-hungry local police force.

Under the "First, undo harm" principle of the Repeal Caucus, a first easy legislative step on the federal level is to prohibit federal law enforcement from engaging in or in any way encouraging civil asset forfeiture. (This would, among other things, force the Drug Enforcement Administration to find more legitimate sources of funding.) But there's also a perfectly fine argument, which inspired legislation from then-lame duck Rep. Justin Amash (L-Mich.), to pass a federal ban on the practice in order to secure otherwise-trampled due process rights.

\* **AUMFs** dating back to 1957 (international communism), 1991 (Iraq), 2001 (9/11), and 2002 (Iraq redux). These laws, especially the latter two, are used this day to wage otherwise undeclared warfare across the globe. No self-respecting legislature within a constitutional framework that gives the war-declaration power to Congress should sit back and let some ancient rubber stamp justify today's drone wars.

\* **Federal Communications Commission (FCC) indecency regulations**. It may be a surprise to humans under a certain age, but "it is a violation of federal law to air obscene programming at any time. It is also a violation of federal law to broadcast indecent or profane programming during certain hours." So says the FCC, right there on the agency's website. What qualifies as obscene? "Material that, in context, depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards for the broadcast medium."

That this "actionable indecency" standard, created by the FCC in 1978 and punishable by up to two years in prison, does not get prosecuted much these days is no reason for free-speech enthusiasts to be complacent: Public censoriousness, and two-party calls for regulating speech, are on the increase. The indecency standards were created not just pre-World Wide Web, but pre-cable television in any meaningful sense. They were meant to protect young eyes in a scarce media environment that no longer exists. Keeping these regs around at a time of political populism is like bringing a bunch of free-loaded pistols to a barfight.

I'm sure anyone reading this can think of other pieces of rancid, low-hanging legal fruit. The point is less to produce the ultimate libertarian law-removal wishlist (though libertarians, being equal opportunity critics of government misuse of power, tend to have topical ideas and allies all over the spectrum), but rather to start a new transpartisan habit, look for issues with high existing or potential public support, and identify ways to reduce government harm.

If government is the source of existing injustice, you do not need an architect to draft an elaborate new bureaucratic remedy; you just need a good eraser. Don't let central planners be the enemy of the obvious fix.

Repeal Caucus, your time is now.