

# NATIONAL REVIEW

## The Hypocrisy Label

*Do we really care about federalism? Or is a certain outcome more important?*

By Michael Tanner

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Last month, voters in Washington, D.C., went to the polls, and by an overwhelming margin of 70 to 30 percent approved a measure legalizing the sale and possession of small amounts of marijuana within the District of Columbia. However, D.C. voters did not reckon with Representative Andy Harris (R., Md.), who, along with Representatives Harold Rogers (R., Ky.) and Jason Chaffetz (R., Utah), is attempting to attach a rider to the upcoming year-end spending package designed to fund the government into 2015 (the so-called Cromnibus legislation). The rider would not just prevent the District government from using federal funds to support legalization, but would actually forbid D.C. officials from spending the District's own tax money to implement the law.

It thus becomes just a little bit harder to take Republicans seriously the next time they talk about federalism and state sovereignty. Yes, of course, D.C. is not actually a state, and Congress does have oversight authority under the Home Rule Act of 1973. But that seems little more than a technicality when it comes to a question of federal intrusion into local affairs. After all, should the federal government overrule local officials and voters on matters of local law enforcement or not?

Observers have long noticed the tendency among liberals toward selective application of their principles. Some might even call it hypocrisy. For example, the freedom to choose is held up as a paramount liberal value when it comes to abortion, but disappears when the question becomes school choice. Many liberal advocates for marijuana legalization would ban cigarettes. And so on.

But conservatives also risk wearing the hypocrisy label if their principles apply only when they like the outcome.

Take another example. A number of Republicans are supporting a constitutional amendment that would prevent the courts from imposing a definition of marriage on the states, essentially allowing each state to decide for itself whether or not to allow gay marriage. While I disagree with such an amendment, it could represent a principled position based on state sovereignty. Yet, it wasn't so long ago that Republicans in Congress were backing a constitutional amendment that would have prohibited states from legalizing gay marriage, even if this was done by vote of the state legislature or by popular referendum. Indeed, the amendment would even have barred states

from passing civil-union legislation. Somehow, 36 Republican congressmen have been cosponsors of both these measures. Among them, unsurprisingly, is Andy Harris.

Do they support as a matter of principle allowing states to decide on marriage, or is federalism merely an opportune tool to achieve other goals? If the latter, how are these congressmen any more principled than, say, the Obama administration?

Milton Friedman once pointed out that “Those of us who believe in freedom must believe also in the freedom of individuals to make their own mistakes. . . . Is there not always the possibility that he is right and we are wrong? Humility is the distinguishing characteristic of the believer in freedom, arrogance of the paternalist.”

Obviously state sovereignty has its limits. State governments cannot be allowed to violate an individual’s fundamental rights any more than can the federal government. But in the absence of such violation, Friedman’s admonition applies to federal–state relations as well as to relations among individuals. If a state chooses to do something that conservatives think is mistaken, the true believer in federalism acknowledges its right to do so.

To do otherwise is the mark, not of the believer in freedom, but of the paternalist.

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