



Written by [Veronique de Rugy](#) on January 18, 2018

Real Federalists Need to Step Up

You would think that the Justice Department has better things to do than to restart a federal war on marijuana or that it would want to stay away from interfering with the will of the people in the 29 states, plus the District of Columbia, that allow at least the medical use of marijuana. But you would be wrong. Thanks to Attorney General Jeff Sessions, we have now an emerging conflict between federal and state laws. That conflict should be resolved in favor of the states.



When he was a senator, Sessions once said during a Senate hearing, “Good people don’t smoke marijuana.” So nobody was surprised when a few weeks ago, he revoked the Cole memo — a document that provided guidance to federal prosecutors about targeting sales to children, money laundering and sales across state lines, as opposed to targeting the legal state sale of medical and recreational pot.

The memo was a poor alternative to revoking the Controlled Substances Act of 1970, which, the Cato Institute’s Trevor Burrus writes, “defined marijuana as a Schedule 1 drug, meaning that it has no accepted medical uses and has a high potential for abuse.” He adds, “Despite advances in our understanding of the medical benefits of marijuana, and despite 29 states having legalized medical marijuana in some form, federal law treats marijuana (as if it were) as dangerous as heroin.” Note that cocaine, which has recognized medical uses, is a Schedule II drug.

The memo had the very positive effect of providing banks, users and dispensaries with confidence that they could operate legally without arrest. Unfortunately, Sessions’ move could signal intent to use federal power to go after individuals and corporations in states that allow marijuana.

Though this is a legal move, it is ill-advised. Whatever one thinks of pot use, I can’t imagine a good justification for going back to prosecuting the perpetrators of victimless crimes except that it fits nicely with the AG’s outdated and paternalistic views.

It also goes against federalism, a belief that Republicans claim to hold, wherein states should be allowed to make decisions outside federal control on a variety of issues — such as legalizing marijuana. The Founding Fathers wrote a Constitution that distributed political power between the states and a national government. Police powers reside with the states, not at the federal level.

Our nation operates on consent of the governed. An Aug. 3 Quinnipiac University poll indicated that 94 percent of Americans support adult use of marijuana for medical purposes, if prescribed by a doctor. This poll indicated that Republican support for medical marijuana is at 90 percent. An Oct. 25 Gallup Poll shows that a majority of Republicans support fully legalizing marijuana. At a time when Republicans are worried about following the will of the voters they’ll face this November, they might want to note those lopsided numbers.

States should be allowed to make decisions outside federal control on a variety of issues and let the people, not the federal government, decide what they want.

Right now, many states respect the right of individuals to choose medical marijuana to treat stress, the



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nausea associated with cancer treatments and epilepsy. In eight states, the people have gone a step further and consented to adults using marijuana without a doctor's prescription. It's the essence of liberty to let people make their own decisions as long as they're not harming others.

This notion eludes Sessions. In 2014, Congress passed the Rohrabacher-Farr amendment, which prohibits the Justice Department from prosecuting medical marijuana businesses in states that allow it. Naturally, the AG wants Congress to pass an appropriations bill removing that language. Now's the time for the real federalists in Congress to stand up and stand by Rep. Dana Rohrabacher, R-Calif., and Sen. Patrick Leahy, D-Vt., who want this restraint on federal interference to continue.

Will the defenders of federalism stop a new war on drugs? The House and Senate are loaded with members who have parroted talking points and claimed that they're federalists; now we'll see whether their action matches up with their rhetoric. Trying to stop the Justice Department's new war on states that have consented to the use of marijuana is an act defending federalism and the will of the people.

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