



Written by [Alex Newman](#) on January 6, 2018

New Marijuana Policy Triggers Bipartisan Love for 10th Amendment

Almost immediately after announcing a change in policy that could lead to a federal crackdown on marijuana users and sellers even in states where pot prohibition has been ended, U.S. Attorney General Jeff Sessions sparked a bipartisan outcry. Perhaps more importantly, he also prompted renewed bipartisan support for one of the U.S. Constitution's most ignored and most important provisions. Indeed, concerns about the 10th Amendment, which reserves all powers not delegated to the federal government to the states or the people, were a the top of the list of complaints — even among many liberals and people who generally tend to be federal supremacists on other matters.



Ironically, on marijuana, at least, [liberals have become ardent proponents of nullification](#), a process advocated by multiple Founding Fathers to rein in unconstitutional actions by the federal government. But while federal marijuana prohibition is not authorized in the Constitution, ultimately, advocates say the ongoing federal-state feud over pot laws will continue until Congress repeals unconstitutional laws it has passed over the years. And at this point, while polls show almost two thirds of Americans oppose pot prohibition, it remains to be seen whether there is enough bipartisan support in Congress to end the decades-old federal war on marijuana.

For months, there had been speculation. But this week, Attorney General Sessions ended that when he officially rescinded an Obama-era policy known as the "[Cole Memo](#)." That policy, formulated by Deputy AG James Cole, [ordered federal prosecutors not to focus on enforcing federal marijuana statutes in states where prohibition of the controversial plant had been ended](#), unless certain conditions were met. On the campaign trail, Donald Trump took the constitutional position that states should set pot policy. Under the new DOJ policy, though, prosecutors in states where pot is no longer banned by state law are given wide leeway in deciding when and whether to prosecute violations of federal marijuana statutes.

"In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions," reads the one-page memo from Sessions, a fierce opponent of marijuana use. Among other factors, Sessions said prosecutors should consider the seriousness of the crime and its impact on the community. So far, it is not clear how significant the changes in policy will be. Indeed, even under the Obama-era policy, prosecutors still would have been allowed under federal statutes to go after marijuana retailers if some "federal interest" were claimed.

At this point, though, the cat is out of the bag, and the horse has left the barn. Already, well over half of



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the 50 states have ended marijuana prohibition for medical purposes in defiance of unconstitutional federal statutes and [illegitimate United Nations treaties](#). Beyond that, at least eight states and the District of Columbia have ended cannabis prohibition entirely, even for recreational purposes. Under Obama, Attorney General Eric Holder acknowledged in Congress that the feds did not have any authority to force states to criminalize the controversial plant. Despite the new DOJ policy, the nullification trend — at least on “weed” — looks set to continue as states across America re-assert their sovereign powers.

The trend of states nullifying unconstitutional federal statutes that purport to ban pot began decades ago for medical reasons. But that accelerated after [Colorado voters ended cannabis prohibition entirely in 2012](#). Unsurprisingly, Colorado was one of the many states to hit back at Sessions. While the U.S. Attorney for Colorado promised there would be no changes, even Republican lawmakers were furious. “I am obligated to the people of Colorado to take all steps necessary to protect the state of Colorado and their rights,” said U.S. Senator Cory Gardner, a Republican who has traditionally stood with the Trump administration. He suggested he would block further DOJ nominees unless and until the policy change was abandoned.

Numerous other Republican lawmakers also broke with Sessions, citing the 10th Amendment. “I think Jeff Sessions has forgotten about the Constitution and the Tenth Amendment,” said Representative Dana Rohrabacher of California, where marijuana has been legal for recreational use for the past week. When asked whether they knew of any lawmakers who supported Sessions’ effort, members of the so-called “Cannabis Caucus” in Congress said “no.” While the 10th Amendment was the most common refrain, a number of Republicans also said that medical marijuana had been very helpful to some of their constituents.

Law enforcement groups also spoke out. “This is going to create chaos in the dozens of states whose voters have chosen to regulate medical and adult use marijuana rather than leaving it in the hands of criminals,” explained Major Neill Franklin (Ret.), executive director of the Law Enforcement Action Partnership. “The administration’s decision to override voter will and the rights of states protected under the Tenth Amendment is going to throw the criminal justice system off balance, affecting not only those working tirelessly to bring the marijuana trade into the sunlight, but also thousands of state officials just trying to do their jobs. If enforcement of laws are subject to the whims of individual prosecutors, no one will have any idea what is legal or what isn’t — because it could change from day to day.”

Another former lawman specializing in narcotics who opposes marijuana prohibition, Nick Morrow, echoed those concerns in comments to *The New American*. “I think we all can agree, the War on Drugs was an abject failure on every level,” he said, citing “trillions of dollars wasted” and hundreds of thousands of arrests. “With alcohol prohibition, a 10th Amendment States Rights challenge was required to end prohibition. Each State got to decide for themselves what the future of Alcohol regulation was going to be. Same with marijuana. We all believe alcohol prohibition ended December 5, 1933. But Mississippi didn’t end it until 1966. States Rights.” Ultimately, though, Congress must act, too, he said.

In the meantime, the former detective with the Los Angeles County Sheriff’s Department called for the feds to back off and benefit from the additional tax revenue being generated by marijuana-related businesses. “I truly believe a failure to properly and intelligently regulate both medical and recreational marijuana is a vote of confidence for the cartels and violent drug gangs to re-establish their



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stranglehold on our neighborhoods,” said Morrow, who retired after a service-related injury to become a private detective and expert witness on drug cases. “It is a vote to further militarize our police forces, for asset forfeiture to go unabated and unchecked.... Now is the time for the Congress to tell this misguided public servant exactly what we the people want to see.”

Even fringe left-wing extremists have suddenly discovered the benefits of federalism and constitutionally limited government — at least when it comes to marijuana. *The Atlantic*, for example, which has continued to lurch to the extreme left in recent years, wrote an article with a headline touting the “The Superiority of a States’ Rights Approach to Marijuana.” “The public wants it, and the Tenth Amendment demands it,” reads the article subhead. Celebrating the states that have nullified unconstitutional federal statutes, the writer declared that those “state efforts are in keeping with the text of the Tenth Amendment.” Of course, that is correct.

That the Constitution does not delegate power to prohibit marijuana to the federal government is self-evident. That is why alcohol prohibition, for instance, required a constitutional amendment to go into effect. The 10th Amendment makes that even more clear. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,” it reads. In other words, under the Constitution that all public officials swear to uphold, it is up to states to decide whether or not to continue prohibition. But in the past, faced with such constitutional abuses, [states have repeatedly been forced to resort to nullification](#).

Politically speaking, too, Sessions appears to be fighting a losing battle. In fact, the latest poll from Gallup shows record support for ending marijuana prohibition, with close to two-thirds of American adults supporting an end to the ban — including a slim majority of Republicans. “Attorney General Jeff Sessions could find himself out of step with his own party if the current trends continue,” Gallup [reported](#). “Rank-and-file Republicans’ views on the issue have evolved just as Democrats’ and independents’ have, though Republicans remain least likely to support legalizing pot.”

While the resurgence in interest in the 10th Amendment is a welcome development, conservatives must ensure that this revival of constitutionalist thinking is not limited to whether or not people can use marijuana legally. Far more important constitutional abuses by the feds, accumulated over generations, threaten the liberties of all Americans. But with the nullification of unconstitutional marijuana statutes, Americans across the political spectrum have seen both the effectiveness and the viability of this important tool for reining in the feds. Now, conservatives need to put it to good use, too.

Alex Newman is a correspondent for The New American, covering economics, education, politics, and more. He can be reached at anewman@thenewamerican.com. Follow him on Twitter [@ALEXNEWMAN_JOU](#) or on [Facebook](#).

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