



Written by [Joe Wolverton, II, J.D.](#) on December 12, 2011

## Obama Changes Course on Medical Marijuana

As a candidate for President in 2007, [Senator Barack Obama made the following statements](#) on his position on the use of marijuana in medical treatment and the protection of the right of states to pass laws permitting such use:



My attitude is if the science and the doctors suggest that the best palliative care and the way to relieve pain and suffering is medical marijuana then that's something I'm open to because there's no difference between that and morphine when it comes to just giving people relief from pain. But I want to do it under strict guidelines. I want it prescribed in the same way that other painkillers or palliative drugs are prescribed.

Then, during the run-up to the New Hampshire primary that same year, Obama promised not to "have the Justice Department prosecuting and raiding medical marijuana users."

He reiterated the point at another New Hampshire campaign event:

I don't think that should be a top priority of us, raiding people who are using ... medical marijuana. With all the things we've got to worry about, and our Justice Department should be doing, that probably shouldn't be a high priority."

And finally, "The Justice Department going after sick individuals using [marijuana] as a palliative instead of going after serious criminals makes no sense."

Shortly after taking office, the Obama Justice Department confirmed the recently inaugurated President's campaign commitments in a document called the "[Ogden Memo](#)."

In that memorandum to federal prosecutors, Deputy Attorney General David Ogden advised that "prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources."

The problem for pot growers and those supplying medical marijuana to shops selling it in states where such sale is legal is a subsequent DOJ memo released earlier this year.

This [new directive, written from Deputy Attorney General James M. Cole](#), takes a noticeably different tack on tackling the medical marijuana industry.

In defining "caregiver" more narrowly than in the previous memo, the Cole Memo excludes "commercial operations cultivating, selling or distributing marijuana" from the de facto protection from federal



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prosecution.

Deputy AG Cole explains that "large-scale, privately-operated industrial marijuana cultivation centers" that "have revenue projections of millions of dollars" will not be shielded "from federal enforcement action and prosecution."

Apparently, the message of the memo has had the intended chilling effect. In [a story published November 23, 2011](#) in the *New York Times*, the result of the "federal crackdown" has "badly shaken the billion-dollar industry" that has sprouted in states with statutes legitimizing the prescription and sale of medical marijuana.

The *Times* story relates the approach taken by current Attorney General Eric Holder in going after groups formerly flourishing under the cozy canopy of federal lassitude.

In the past several weeks, federal prosecutors have raided or threatened to seize the property of scores of growers and dispensaries in California that, in some cases, are regarded by local officials as law-abiding models. At the same time, the Internal Revenue Service has levied large, disputed tax charges against the state's largest dispensary, threatening its ability to continue.

Underlying the DOJ's new animus toward medical marijuana and those growing and supplying it to "dispensaries" is the "parallel universes" of state and federal drug laws.

The Department of Justice is an agency of the executive branch; thus, its powers are set forth in Article II of the Constitution. There is no provision in that article authorizing the President of the United States (or any department of the executive branch) to regulate the cultivation or sale of any substance. This lack of a grant of power is especially noticeable when it comes to using federal law enforcement to nullify state laws through raids and prosecution of state entities operating within the limits of the law of that state.

With regard to the passage of applicable federal laws establishing drug control mandates, the Constitution stores all legislative power in the Congress. The powers allotted to the legislative branch are enumerated in Article I of the Constitution.

As in the case of the executive branch, the Constitution is silent on the issue of regulation of the growth and sale of crops of any sort.

Where the Constitution is not silent, however, is in the proper relationship between the limited, narrow powers granted to the federal government and those retained by the states that created it.

The [10th Amendment](#) defines the borders separating state and federal authority: "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."

That is a very simple and straightforward explication of what the federal government may and may not do, especially in questions of conflicts of laws between the federal government and the state governments.

Furthermore, the [preceding amendment](#) makes it clear that the people's rights shall not be denied or disparaged by any "enumeration" of rights in the Constitution.

These twin palladia of liberty stand as guardians of the unalienable right of states to govern themselves and to enact laws according to their own legislative will subject to the approbation of the people represented by those state governments.



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This point is made ably by Representative Ron Paul in his recent book, [Liberty Defined](#). In the chapter entitled "Prohibition," Congressman Paul argues first that "laws that prohibit the use of certain substances — food, drugs, or alcohol — by adults is a dangerous intrusion on personal liberty."

Recounting the fact that such laws are historically ineffective in changing people's "habits and character," Paul states that if "there are to be any regulations on the use of certain substances in the United States, it was intended that this should be done by the individual states, not by the federal government."

Describing the federal War on Drugs as a "lost cause," the current GOP presidential contender recommends that "states must reassert themselves in order to provide more sensible government to their citizens."

The Obama administration has admitted that it will not be able to "arrest [its] way out of the [drug] problem." Nevertheless, the White House intends to continue supporting "innovative law enforcement efforts" to eradicate the growth and sale of marijuana for use as a palliative. This aggressive prosecutorial policy has been promulgated regardless of the express will of the voters in 16 states where healthcare providers have been authorized to prescribe medicinal marijuana as a treatment for pain.

Although certainly a controversial subject and one on which reasonable people may and do disagree, there is no disputing the fact that in this as in so many other cases, the federal government is disregarding the sovereignty of states and seeking to impose its will on Americans in open and hostile defiance of constitutional principles.



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