



Written by [Steve Byas](#) on January 16, 2018

Use Pot — Even Medical Marijuana — and Lose Your Second Amendment Rights

With an increasing number of states having legalized the use of marijuana for “medical” purposes, we are on a collision course between an ardent marijuana foe (Attorney General Jeff Sessions) and the Second Amendment-protected right to keep and bear arms.



Sessions is certainly not alone in his opposition to the use of marijuana. Millions of Americans view marijuana as a dangerous drug, and so do many law-enforcement figures — in the federal government and in the states. The question is, should a person who uses marijuana — even for a medicinal reason — lose his or her right to purchase a firearm, or even own one?

“They’re going to have to make a choice,” stated John T. Adams, president of the Pennsylvania District Attorneys Association. “They can have their guns or their marijuana, but not both.”

“It’s a violation of my Second Amendment rights,” complained Phil Gruver, who recently obtained a Pennsylvania medical marijuana card in December. He may now be faced with foregoing either his marijuana treatment or his rifle and handgun that he uses for self-defense.

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Sessions recently overturned the policy adopted during the Obama administration that left it up to the states to make such a decision. Now, in states that allow the medical use of pot, or even its recreational use, such as Colorado, federal prosecutors are being instructed to ignore such state laws, and instead enforce federal law which prohibits any person who is an “unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act) from shipping, transporting, receiving or possessing firearms or ammunition.”

In an open letter sent to all federal firearms licensees in September 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provided “guidance” on the issue. “A number of States have passed legislation allowing under State law the use or possession of marijuana for medicinal purposes, and some of these States issue a card authorizing the holder to use or possess marijuana under State law. During a firearms transaction, a potential transferee may advise you that he or she is a user of medical marijuana, or present a medical marijuana card as identification or proof of residency.”

However, the ATF letter continued, “There are no exceptions in Federal law for marijuana purportedly used for medicinal purposes, even is such use is sanctioned by State law.”

Because of this, it is “unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having a reasonable cause to believe that such person is an unlawful user or



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addicted to a controlled substance.” Therefore, “any person who *uses* or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition.” (Emphasis added.)

Regardless of what one thinks of either recreational or medicinal marijuana use, this raises some serious questions that have more to do with the rights of the states under our federal constitutional system and the constitutionally protected right to keep and bear arms. While the ATF is certainly citing an actual federal law, one must question what language in the Constitution gives any agency of the U.S. government the constitutional power to regulate drugs at all. After all, members of Congress once rightly recognized that they had no constitutional basis to regulate alcohol, so they sent an amendment to the states, which wound up giving the legal grounds for them to do so (the 18th Amendment). However, no such amendment has ever been passed in regard to marijuana, or any other drug.

Also, if people can lose their right to purchase a firearm simply because they are taking a “controlled” drug, what about those who are taking Percocet for cancer, Tylenol III, or Lomotil for diarrhea? “Druggies” may become aware a cancer patient is on Percocet, and break into his house to get it. This federal statute, however, would forbid the homeowner from purchasing a firearm for home protection. Interestingly, a person heavily addicted to whiskey would have no such restriction!

Those who view this issue as just about marijuana should consider the concept of precedent. Taking away a person’s Second Amendment rights simply because the person is using marijuana in a medical treatment can set the precedent to expand such usage. After all, anti-gun fanatics are always looking for ways to restrict the Second Amendment. For example, many liberals have advocated the use of the “no-fly list” to restrict gun purchases, creating the catchy phrase, “No fly, no buy.”

Instead of taking away Americans’ right to buy a gun simply because they are using marijuana, the Trump administration should be leading the charge to change the federal law in this case.

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