

Congress and Cannabis Must Find A Way to Get Along

On few issues are voters and federal policymakers more out of sync than on cannabis, particularly its medical use. States legislatures and voters, through ballot initiatives, are increasingly signaling their willingness to support reasonable solutions, while federal policy continues to be stuck and – worse still – contradictory. On the one hand, cannabis remains a Drug Enforcement Agency (DEA) Schedule 1 controlled substance, a designation with no accepted medical use that carries high penalties and prison time and for which distribution is a felony with mandatory minimum sentences. On the other hand, year after year, Congress passes appropriations language prohibiting the U.S. Department of Justice (DOJ) from using federal funds for enforcement against medical marijuana in states that have “legalized.”

Popular thinking holds that with Democrats in charge in the House, marijuana policy is poised for change. Not necessarily. See above. It’s true that Democrats are bringing momentum to the issue and proceeding with much-needed hearings, for starters. But near-term statutory change remains a heavy lift.

Continued Schedule 1 treatment of cannabis at the federal level, with no permanent statutory modifications, has created an indefensible public policy outcome. While the states are rightly the laboratories of democracy, that concept crosses the line when the result is the turning of a blind eye to states’ actions in direct defiance of federal drug policy. The blind-eye approach cannot be either a positive policy precedent or a desirable long-term outcome on the issue itself.

It’s past time for federal policymakers and Republicans, particularly, to come to the table and conduct a full-scale review of cannabis policy, including whether to: fix the disconnect between federal and state policies; allow states (and voters), within reason, to make the decisions for their citizens; give individual Americans and their physicians the right to make their own judgments about medical marijuana; allow patients’ gaining relief from medical marijuana to use without fear of prosecution or stigma; take a serious look at whether current policy results in the misallocation of limited law enforcement resources; support more robust research to add to the existing body of knowledge; and, prevent the needless destruction of lives related to marijuana incarceration.

Despite more than thirty-three states having moved ahead to loosen state regulation of medical marijuana, the federal government remains the pre-imminent authority with respect to drug policy.

Lacking a consensus on the solutions but recognizing the growing voices of the states and the “people,” Congress has responded with a stop-gap solution. Every year, Congress has included appropriations language that prohibits the DOJ from using funds for federal enforcement in states that have “legalized” medical marijuana. Yet, a myriad of problems results from this limited and temporary solution.

At his confirmation hearing, Attorney General Barr stated that he would not seek to prosecute or otherwise interfere with the cannabis industry in legal states. While he noted that he was personally against legalization, he stated it was his desire that Congress create a national policy.

Basically, today’s policy can best be summarized as “keep it illegal but don’t enforce.”

As a country, we can do better.

Jack Fields, CEO of the Twenty First Century Group, is an entrepreneur, a former representative of the 8th District of Texas, and a conservative Republican, who is supportive of a sensible marijuana policy. Jack is a change-agent. He was a co-author of the 1996 Telecommunications Act, which fundamentally reshuffled the deck and helped pave the way for the telecommunications revolution. He has spent decades forging bipartisan consensus inside and outside of Congress. A graduate of Baylor University and Baylor School of Law and a member of several board of directors, his views are his own. Jack worked his way through college selling cemetery property; that formative experience might be his best training of all for taking on the difficult job of finding consensus on cannabis.

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