

THE NATIONAL LAW REVIEW

Legal, Political and Practical Challenges in Regulating Recreational Marijuana

Wednesday, April 5, 2017

On March 30, eight bills were introduced by senior members of Congress from both parties to legalize, regulate and tax marijuana. The bills were referred to at least five House Committees, as they address federal criminal law, taxation, banking, transportation, immigration, veterans' affairs, access to federal benefits and other issues. The legislative activity follows establishment of the Congressional Cannabis Caucus in February. Leaders of the new caucus represent four of the eight states where voters have approved recreational use of marijuana by adults.

In the initial press conference held by Cannabis Caucus members and in statements explaining the new legislation, House and Senate members made frequent reference to laws regulating alcohol beverages. Bills introduced earlier in the current session of Congress also call for state-by-state regulation using language similar to the Section 2 of the Twenty-first Amendment, which authorized each state to regulate the delivery and use of "intoxicating liquors" within its borders.

The failure of national Prohibition of alcohol beverages is often cited as a rationale to legalize recreational marijuana use. Before proceeding toward wider legalization, policymakers should gain a deeper understanding of the history of Prohibition and the regulatory scheme that emerged after repeal. Government regulation is necessary in a complex and pluralistic society of 320 million, but effective marijuana regulation is a tall order.

The aim of several recent proposals is simply to reconcile federal and state policies. That initial step is a practical and political challenge given the deep-seated contradictions in current marijuana policies at the federal and state levels. A few examples follow:

1. The states where recreational marijuana use is now legal are solidly "blue" or "purple" on the electoral map. Yet many safeguards to prevent diversion into illegal markets included in the laws enacted by the people can only be enforced through intrusive law enforcement methods, such as ongoing inspections of the number of plants in homes and on private property. Likewise, the great rush of promised tax revenue can only be realized with "big brother style" oversight of the regulated industry members to prevent illegal diversion.
2. In 2009, California officially declared marijuana smoke to be a carcinogen with a compendium of evidence. Eight years later, California regulates marijuana for medical use and is in the process of establishing policies for recreational use.
3. At the local level in California, the Undersheriff of Humboldt County, California told the *PBS Newshour* that he believes most of the marijuana grown in the fertile fields of his jurisdiction purportedly for medical use is actually diverted to the illegal market. His agency conducts raids each month, confiscating weapons and other contraband.

Simultaneously at the federal level, the President and many of his top aides routinely cite drug smuggling through Mexico and associated lawlessness as part of their defense of a multibillion dollar wall, more than 750 miles south of Humboldt County.

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4. Presidents Obama and Trump—polar opposites in temperament and philosophy—appear to agree on maintaining longstanding federal policies classifying marijuana in a category of dangerous and addictive drugs. President Trump’s team is threatening stricter enforcement of existing laws.
5. Advocates of marijuana legalization extol its relative safety and benefits while top federal medical researchers estimate that approximately six million Americans suffer from “marijuana use disorder.”

Regulating and taxing a popular consumer product subject to abuse is far greater challenge today than the task facing Congress and the states after repeal of Prohibition.

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