



Written by [Jack Kenny](#) on May 30, 2014

House Votes to Stop Feds From Interfering With State Marijuana Laws

The House of Representatives early Friday morning [voted](#) to halt federal law enforcement against medical marijuana in states that have legalized the practice. By a vote of 219 to 189, the representatives amended an appropriations bill to forbid the Justice Department, which includes the Drug Enforcement Agency, from using federal funds to interfere with state laws that “authorize the use, distribution, possession, or cultivation of medical marijuana.”

Twenty-two states now permit medical use of the drug, which remains banned under federal law.



The amendment was offered by Republican Dana Rohrabacher of California, one of the first states to legalize medical marijuana with the passage of its Compassionate Care Act in 1996. “Some people are suffering,” Rohrabacher said during the House debate, “and if a doctor feels that he needs to prescribe something to alleviate that suffering, it is immoral for this government to get in the way.”

“The conflicting nature of state and federal marijuana laws has created an untenable situation,” Oregon Democrat Earl Blumenauer said. “It’s time we take the federal government out of the equation so medical marijuana business owners operating under state law aren’t living in constant fear of having their doors kicked down in the middle of the night.”

President Obama said numerous times as a candidate for president that raiding medical marijuana centers was not a good use of Justice Department resources. Attorney General Eric Holder said early in the president’s first term that the department had no plans to prosecute medical marijuana use where it is approved by state law. But federal raids at licensed dispensaries have continued in several states, including Washington and Colorado, where voters in 2012 approved legalization of even recreational marijuana use for adults. Federal prosecutors say they target activity that violates state as well as federal law, as in the selling of drugs to minors, the use of bogus prescriptions, or dispensing of marijuana away from an authorized site.

“The policy is to go after those people who violate both federal and state law, to the extent that people do that and try to use medical marijuana laws as a shield,” Holder said in his March 2009 statement of administration policy. “Those are the organizations, the people, that we will target. And that is consistent with what the president said during the campaign.”

The amendment is to the House Resolution authorizing spending for “Commerce, Justice, Science, and Related Agencies” for 2015. The Senate will have its own appropriations bill and the amendment will have to survive a vote of the House-Senate Conference Committee. Supporters seemed elated, nonetheless, that that the measure has made it this far. Similar efforts in the House have failed six times, noted Jacob Sullum at [reason.com](#). Though only 49 Republicans voted for it this time, that’s 21



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more than supported the legislation the last time it came up.

“Republicans increasingly recognize that marijuana prohibition is a failed Big Government program that infringes on states’ rights,” said Dan Riffe of the Marijuana Policy Project. “If any political observers weren’t aware that the end of the war on marijuana is nearing, they just found out,” exulted Tom Angell, chairman of Marijuana Majority.

Three of the Republicans who joined in the House debate are medical doctors, with one supporting and two opposing the amendment. “It’s the camel’s nose under the tent,” said Andy Harris of Maryland voicing concern that medical marijuana laws are leading to the legalization of recreational use. Harris was joined in opposition by John Fleming of Louisiana, while Georgia’s Paul Broun argued that medicinal marijuana is “less dangerous than some narcotics that doctors prescribe all over this country.” Congress needs to “reserve the states’ powers under the Constitution,” he said.

The House vote appears to be following public opinion on the issue, with a recent Pew poll showing 67 percent of Americans support drug policies that focus on providing treatment, rather than an arrest and prosecution. A CBS News poll found 86 percent believe doctors should be able to prescribe marijuana to seriously ill patients.

Beyond the polls, however, is the constitutional issue cited by Broun. Earlier in the week, Grover Norquist, president of Americans for Tax Reform, and Ethan Nadelmann, executive director of the Drug Policy Alliance, wrote in an article at [daily caller.com](#) that a “Yes” vote on the amendment should be an easy choice for “members of the 10th Amendment Task Force on Capitol Hill and other believers in limited government and federalism.”

The problem with “limited government” is that those who espouse it rarely say what government should be limited to doing. The powers of the federal government are defined and limited by the Constitution of the United States, which gives no authorization to either the Congress or the executive branch to wage a war on marijuana or any other drug. There is, to be sure, interstate commerce in drug trafficking, just as there in the manufacture and sale of alcohol. But Congress thought it necessary to amend the Constitution to establish Prohibition in 1919. Drug laws, on the other hand, have been passed as federal statutes with no constitutional authority behind them. The medical marijuana controversy has highlighted the extent to which which all three branches of the federal government have stretched the Commerce Clause to expand federal power. One need look no further than the 2005 Supreme Court decision in *Gonzales v. Raich*, which held that even the growing of cannabis plants at home for a patient’s own use falls under the power of Congress to regulate interstate commerce.

The Court upheld the federal Drug Enforcement Agency’s action in seizing and destroying a California resident’s six homegrown plants after a three-hour standoff between the DEA agents and county deputy sheriffs. Though the plants were grown for a use that was non-commercial and entirely in-state, Justice John Paul Stevens, writing for the court majority, ruled that the Commerce Clause applied because of “the likelihood that the high demand in the interstate market will draw such marijuana into that market.” Thus, Congress may regulate not only interstate commerce, but anything that might become a part of interstate commerce — in other words, anything at all. As Justice Clarence Thomas put it in his biting dissent, “If the majority is to be taken seriously, the Federal Government may now regulate quilting bees, clothes drives and potluck suppers throughout the 50 states.” In banning non-commercial, intrastate growth of cannabis even for medical purposes, Thomas wrote, “Congress has encroached on States’ traditional police powers to define the criminal law and to protect the health, safety and welfare of their citizens.”



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Maybe Rep. Harris is right and the effort by the House to make the DEA respect state laws on medical marijuana will be the “camel’s nose under the tent.” Perhaps the Congress will one day vote to eliminate the federal Drug Enforcement Agency altogether.



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