



Written by [Alex Newman](#) on August 29, 2013

Feds Will Respect State Sovereignty on Marijuana, Says AG Holder

After voters in Colorado and Washington State voted for [nullification to repeal marijuana prohibition](#), anxiety about how the Obama administration would respond spread nationwide as conservatives wondered whether federal authorities would respect the Constitution and the Tenth Amendment while liberals fretted about the will of voters. Concerns were especially widespread given the president's [ruthless persecution](#) of the legal medical cannabis industry in over 20 states. In an August 29 [announcement](#), however, Attorney General Eric Holder finally answered the question: The feds will apparently somewhat respect state laws, at least for now.



According to news reports citing unnamed "officials," Holder informed the governors of the two states about the Justice Department's decision over the phone on Thursday. According to media accounts, the embattled attorney general said the federal government would not seek to challenge the state-level nullification initiatives for the time being — assuming authorities implement regulatory regimes that would, among other points, keep the controversial plant out of the hands of minors. Also on the list of federal demands: Cannabis should not be diverted to states where prohibition remains in effect, it is not allowed on federal property, revenue from sales should not go to criminal enterprises, and more.

Critics of drug prohibition applauded the decision as major turning point. "Today's announcement by Eric Holder and the Department of Justice should be hailed as a victory for the 10th Amendment, states' rights, and small-government proponents," retired police Lieutenant Commander Diane Goldstein, a board member with the group [Law Enforcement Against Prohibition](#) (LEAP), told *The New American*. "Just as it was the states that finally ended the failed experiment with alcohol prohibition, it is the states that are propelling radical shifts in our national drug policy today. It is long past due for our politicians and all the branches of our government to support this change."

However, despite the decision, the federal government is hardly taking a hands-off approach. In a [memo sent to U.S. attorneys nationwide](#), Deputy Attorney General James Cole offered some insight as to the Justice Department's agenda. "The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health and other law enforcement interests," the document states. "A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice."

Despite decades-old [United Nations agreements purporting to require global prohibition](#) of the controversial plant and [unconstitutional federal statutes claiming to outlaw it](#) for virtually any purpose



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nationwide, state governments have increasingly turned to nullification by rejecting the war. Already, almost half of the states have adopted laws allowing marijuana to be used for medical purposes. Last year, voters in Colorado and Washington [decided to end the war on cannabis](#) completely, making it available legally to adults while taxing and regulating the industry.

The UN, of course, has been [complaining loudly about recent developments in the United States](#), absurdly claiming that sovereign state governments could not regulate the plant as they see fit. The global entity even [demanded that Obama quash the will of voters](#), drawing fury from across the political spectrum. Meanwhile, despite its rhetoric, the Obama administration has been targeting the medical-marijuana industry in states where it is legal [more ferociously than even](#) former President George W. Bush. The new guidelines to federal prosecutors, however, while leaving some leeway for prosecutorial discretion, are expected to rein in many of the excesses, according to analysts.

News reports and official documents also indicate that the Justice Department has “reserved the right” to challenge state efforts to end prohibition at a later date if it so chooses. In a [press release](#) about the move, the administration said it expected state governments ending the war on marijuana to “establish strict regulatory schemes” protecting the supposed “federal interests” outlined in the memo to U.S. attorneys. “These schemes must be tough in practice, not just on paper, and include strong, state-based enforcement efforts, backed by adequate funding,” the administration demanded in the statement, warning that it could take action in the future if federal dictates were not followed.

Prominent lawmakers on both sides of the aisle have been working for years to have the federal government obey the Constitution and respect state sovereignty on the issue in cases where legislatures have nullified unconstitutional statutes. Senator Rand Paul (R-Ky.), widely considered to be one of the more liberty-minded and constitutionalist lawmakers in Washington, D.C., has been among the leading proponents. Even among the most hard-core, Big Government-loving Democrats, however, the sentiment has been gaining traction.

Senator Patrick Leahy (D-Vt.), for example, who chairs the Senate Judiciary Committee and plans to hold a hearing featuring Attorney General Holder about the issue, has been urging the Obama administration to respect state decisions. “It is important, especially at a time of budget constraints, to determine whether it is the best use of federal resources to prosecute the personal or medicinal use of marijuana in states that have made such consumption legal,” [explained](#) Leahy, whose state also [recently nullified UN and federal decrees on cannabis](#). “I believe that these state laws should be respected. At a minimum, there should be guidance about enforcement from the federal government.”

Activists focused on reforming drug laws, meanwhile, praised the recent announcement as well. Director of Federal Policies Dan Riffle with the Marijuana Policy Project, the nation’s largest organization focused on cannabis-related policy, called the Justice Department’s decision a “major and historic step toward ending marijuana prohibition” in the United States. “The Department of Justice’s decision to allow implementation of the laws in Colorado and Washington is a clear signal that states are free to determine their own policies with respect to marijuana,” he added, applauding federal agencies for the “thoughtful approach and sensible decision.” The next step, Riffle concluded, is for Congress to act.

Unsurprisingly, the National Cannabis Industry Association was also pleased with the decision, with Executive Director Aaron Smith saying in a statement that the trade group was encouraged by the administration’s response. “At the heart of the guidance is a willingness to respect the voters who have decided a regulated marijuana market is preferable to a criminal market in their states,” he said in a



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statement. “Cannabis-related businesses in these states are creating thousands of jobs and generating tens of millions of dollars in tax revenue. These are clear public benefits.” Concluding his remarks, Smith said his association hoped that the announcement would mean an expansion of “sensible policies related to marijuana.”

Despite numerous controversies surrounding the safety and morality of consuming the plant, the move is also being seen as a positive development among constitutionalists — especially because, as *The New American* outlined in great detail in 2011, the federal government has no constitutional authority to regulate or ban any substances. That is why alcohol prohibition, for example, required a constitutional amendment, which was ultimately repealed after the scheme led to soaring crime, lawlessness, an explosion of gang activity, and numerous other problems. Experts say even if it was not the administration’s intention, it appears as though the decision represents at least a partial victory in practice for the 10th Amendment [granting all powers not delegated to the federal government to the states or the people](#).

However, the latest announcement is also raising a series of other important questions. If states can end prohibition by [nullifying unconstitutional federal statutes](#) and UN mandates on marijuana without drawing the administration’s fury, why not on firearms, for example, or ObamaCare? When Kansas passed a measure upholding the Second Amendment and rejecting unconstitutional federal gun control, Holder lashed out, [sending a threatening letter to Kansas Governor Sam Brownback](#). It appears to observers, then, that the decision to partially respect state sovereignty in practice on the marijuana issue was driven by politics rather than principle, as a majority of Americans and especially Democrats now support repealing prohibition. Still, regardless of the administration’s motives and constitutional confusion, activists from across the political spectrum say it was a good move. Now, supporters of the measure are just waiting to see whether the Justice Department will follow through.

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