

OPINION

# A Move To Undo Colorado's Pot Laws

Neighboring states are burdened by marijuana commerce. They have the power to make it stop.

BY MARK A. PERRY

In 2012, Colorado voters agreed to “legalize” marijuana by passing an amendment to their state constitution. In implementing that decision, Colorado officials have set themselves up for an inevitable showdown with the federal government. The feds will win this one, as they should.

Congress enacted the Controlled Substances Act in 1970 to provide a “closed system” for the regulation of dangerous drugs at the federal level. Congress designated marijuana as a controlled substance from the outset, and the Drug Enforcement Administration (which exercises authority to determine the dangerousness of a particular drug) has maintained that designation ever since. To this day, federal law makes

it unlawful to “manufacture, distribute [or] dispense” marijuana, and to possess the drug with intent to distribute it.

In *Gonzales v. Raich*, the U.S. Supreme Court in 2005 held that the federal marijuana prohibition is a valid exercise of the commerce power because exemptions for individual states would “have a significant impact on both the supply and demand sides of the market for marijuana.”

The U.S. Department of Justice, which is responsible for enforcing the Controlled Substances Act, has decided to turn a blind eye to Colorado’s rampant violations of federal law. Even though the state is openly aiding and abetting the large-scale distribution and sale of marijuana—federal felonies—the federal government has notified Colorado that it is

deferring its right to challenge the state’s legalization laws.

In light of this administration’s abdication of its obligation to enforce federal law, two of Colorado’s neighbors—Nebraska and Oklahoma—recently asked the Supreme Court for leave to file an original bill of complaint to stop Colorado’s ongoing violations of federal law. This case raises extremely important issues at the intersection of law, public policy and federalism. The court should allow it to proceed.

The Supreme Court has original jurisdiction over lawsuits between sovereign states, particularly when one state is discharging pollutants—toxic chemicals, garbage or sewage—in a manner that adversely affects its neighbors. That is precisely what Colorado is doing here.

Marijuana sold in Colorado doesn't stay in Colorado. Pot purchasers can and will transport the drug to neighboring states and beyond.

As the Supreme Court explained in *Raich*, the Controlled Substances Act forecloses state-level exemptions because they "would undermine the orderly enforcement of the entire regulatory scheme." Under *Raich*, one state's choice to "legalize" marijuana will affect others, given the likelihood that the high demand in the interstate market will draw marijuana into that market. The Colorado experience has already demonstrated as much.

Colorado is "becoming a major exporter of marijuana"—as its own attorney general recently admitted. Seizures of marijuana bound for other states increased almost 400 percent after Colorado passed Amendment 64.

While Colorado's own revenues have benefited from "legalization" as it participates in the drug trade through taxation, the costs are borne by other states that are involuntarily forced to combat a flood of illegal drugs that originate in Colorado. They have to pump more money into law enforcement and criminal justice than they otherwise would, leaving them fewer funds with which to tackle

other pressing matters of public health and welfare.

As the DEA explained just last year: "Legalization of marijuana, no matter how it begins, will come at the expense of our children and public safety. It will create dependency and treatment issues, and open the door to the use of other drugs, impaired health, delinquent behavior and drugged drivers."

### ADVERSE EFFECTS

Study after study has confirmed the adverse effects of marijuana, especially in children and adolescents. Teen marijuana use has been shown to impair intellectual function, memory, cognition and learning. It has been linked to depression, suicidal thoughts, psychosis, schizophrenia and juvenile crime. The American Medical Association, the American Academy of Pediatrics and the American Academy of Child and Adolescent Psychiatry have expressed concern that "legalization" efforts will harm young people.

People of good faith may debate the wisdom of federal drug policy, including the continued classification of marijuana as a controlled substance. But the overriding message of the Controlled Substances Act is that those debates must be held at the federal level. Unless and until Congress or the DEA acts to

reclassify marijuana, it cannot legally be distributed or sold anywhere in the United States. Congress has made the considered judgment that the regulation of marijuana is a subject that requires a uniform and consistent national approach, and the Supreme Court has already sustained that judgment.

The supremacy clause of the U.S. Constitution provides that, in the event of conflict between the objectives of federal and state law, federal law prevails. Accordingly, in the looming confrontation between the federal Controlled Substances Act and Colorado's Amendment 64, the Constitution has already declared federal law the victor.

Principles of federalism, properly understood, preclude Colorado (and other individual states) from experimenting with the "legalization" of dangerous drugs, including marijuana.

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