**The Department of Justice's Marijuana Memo Is a Disappointment for Federalism**

By Matt Kaiser, Huffington Post, 9/19/13.

<http://www.huffingtonpost.com/matt-kaiser/the-department-of-justice_2_b_3943401.html>

Changes in marijuana laws have been moving through the country. From the legalization of medical marijuana in a number of states and the District of Columbia to the outright legalization of small quantities in Colorado and Washington State, it hasn't been such a good time to be a fan of marijuana since the invention of the Funyun in 1969.

There's just one catch -- marijuana is still illegal under federal law. The Department of Justice could still, at any moment, crash the party by swooping into Boulder and arresting folks who are lighting up.

Of course, no one really thinks that federal prosecutors are going to start harassing people smoking small amounts of marijuana for personal use. Maybe that small-time pot dealer would have reason to worry, though maybe we think he should be worried anyway.

The real question has been about what the Department of Justice would do with state governments and their regulations of the production, processing and sale of weed. Is the federal government going to prosecute the state of Colorado for aiding and abetting the distribution of marijuana? Or come after state officials? While those would be unsavory, it isn't outside the realm of what the Department of Justice could do.

And, a few weeks ago, the Department of Justice explained just what they'll do. Sort of.

As Deputy Attorney General James Cole explained, the Department of Justice will focus its efforts on "certain enforcement priorities that are particularly important to the federal government." These priorities include:

keeping weed from minors,

keeping the money from marijuana out of the hands of drug cartels,

keeping pot in states where it is legal from going to states where it's not (folks in Portland, Oregon, in particular, are worried about this),

keeping marijuana from impacting public safety, and

keeping pot off of federal property.

The Department of Justice then explained that, as long as those federal priorities aren't compromised, and there's really strong laws and regulations around how marijuana is grown, sold, distributed, and possessed, then, those states can rest assured that "conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above."

If that happens, then,

consistent with the traditional allocation of federal-state efforts . . . enforcement of state law by state and local law enforcement . . . should remain the primary means of addressing marijuana-related activity.

But, in case you're worried that this non-statement of non-involvement is too clear, DOJ wants you to know that the federal government can still come in to do whatever it has the ability to do "including criminal prosecutions."

The Department of Justice, in the end, just can't bring itself to say that it won't prosecute state, state officials, or people in states, who are relying on state law in order to figure out what's legal and what's not.

This is a real shame for federalism. As imagined at the start of our country, the point of having states is supposed to be that each state can experiment with different policy ideas. Vermont, for example, can decide to legalize gay marriage, while Alabama doesn't. Maybe Iowa wants to have gambling and Nevada doesn't (or, more likely, vice versa). We let Illinois legalize prostitution while Utah makes it punishable by life in prison.

Let a hundred flowers bloom.

The idea is that people in different states will think of different ways to structure their lives and communities, we'll see which ones work better, and then a new idea will either catch on or not. If Iowa's newer lower speed limits save lives, then maybe Wyoming wants to follow suit. Or not.

When the federal government over regulates in an area where the states disagree, it undermines the foundation of our federal system.

Here, the Department of Justice had a historic opportunity to say that since the people of these states had spoken, as long as what happens in Colorado stays in Colorado, they wouldn't make a federal case out of it. Instead, they issued a mealy-mouth statement about their ability to come in like a ton of bricks if their priorities aren't met.

It's a lost opportunity.

**1. From the author’s point of view, what is the best way for the Federal government to handle instances where State law runs in violation of Federal law?**

**2. What does the author argue was the original role of the states in our system of federalism?**

**3. The Department of Justice has established 5 objectives that must be met to prevent Federal involvement with Colorado’s legalization of recreational marijuana use. What are these five objectives?**

**4. What do you think should be the determining factor in the federal government’s decision to become involved when State and Federal laws are at odds?**