

Post-Election: The Future of Cannabis in GOP-Controlled States

Federal Cannabis Reform Faces Hurdles Amid Conservative Pushback

The journey toward federal cannabis reform in the United States has been a long and winding road, marked by complex legal battles and an evolving public perception of cannabis. Despite growing bipartisan support and widespread public demand for cannabis legalization—particularly for medical use—a recent wave of conservative opposition appears to be stalling progress toward federal recognition of cannabis. As conservative lawmakers and influential think tanks push back against reform efforts, they are also influencing key regulatory decisions that could impact the cannabis industry's future.

The State of Federal Cannabis Policy: A Shifting Landscape

The push for federal recognition of cannabis, particularly for medical use, seemed within reach. The prospect of rescheduling or even de-scheduling cannabis from its current Schedule I classification (reserved for drugs with no accepted medical use) appeared more realistic than ever, with numerous states legalizing cannabis in various forms and an increasing acceptance of cannabis's medicinal value. However, conservative policymakers and political influencers have begun to exert pressure, resulting in policy changes and proposals that could curb the momentum for cannabis reform.

A central figure in the cannabis policy debate is former President Donald Trump, who previously promised to leave cannabis legalization to the states. While a strong proponent of states' rights within the Republican Party supports this approach, there is growing skepticism over the feasibility of Trump's promise. Recent actions by the House Appropriations Committee, as well as policy guidance from influential conservative groups, indicate that federal resistance to cannabis legalization could undermine state-level cannabis markets.

Federal Funding Blocked for Rescheduling and De-Scheduling Cannabis

A significant roadblock to cannabis reform has emerged in the form of a funding restriction within the House Appropriations Committee's Commerce, Justice, Science, and Related Agencies (CJS) appropriations bill. Specifically, Section 623 of the bill blocks federal funding for any activities aimed at rescheduling or de-scheduling cannabis, effectively halting efforts to reclassify cannabis as a substance with medical benefits. Without federal funding, even agencies that support reform, such as the Department of Justice (DOJ), are hamstrung in their ability to advance reclassification.

This provision raises an important question: How can the DOJ or any other federal agency pursue cannabis reform without the necessary funding? Federal agencies responsible for implementing changes to cannabis scheduling now face an uphill battle, as their hands are tied financially from moving forward with any form of reclassification.

Expanded Federal Enforcement Powers Against State-Legal Cannabis Businesses

Beyond funding restrictions, the House Appropriations Committee has also proposed amendments that expand federal enforcement against state-legal cannabis businesses. Under these new provisions, the federal government could take action against any cannabis-related activity conducted within 1,000 feet of specific facilities, including schools, playgrounds, housing projects, and other public spaces. This amendment broadens the reach of federal enforcement, enabling action against cannabis businesses that previously operated under a 600-foot zoning buffer, as permitted by many state laws.

The implications of this policy shift are significant, especially for cannabis businesses in states with more relaxed zoning regulations. Businesses that have complied with local laws but operate within the new 1,000-foot boundary would be at risk of federal enforcement, even if they have obtained all necessary state permits. This regulatory inconsistency places a considerable burden on cannabis operators, who must navigate a complex web of federal and state rules that often conflict.

Judicial Interpretations and Conservative Influence Over Schedule 3 Cannabis Rules

Federal courts have also become a battleground for cannabis policy. The Supreme Court of the United States (SCOTUS) recently overturned regulatory deference principles that had previously allowed agencies to interpret their authority in classifying substances. With this change, conservative influence is expected to shape both the DOJ's ability to reschedule cannabis and the regulatory framework if cannabis is moved to Schedule 3.

If rescheduled to Schedule 3, cannabis would no longer be classified as a drug with no accepted medical use, potentially allowing for expanded medical research and easing certain restrictions on the cannabis industry. However, conservative leaders have expressed concerns about cannabis's impact on society and have already proposed regulations such as federal tracking and production limits to ensure the U.S. meets international treaty obligations. These proposed limitations could stymie growth within the industry and place additional burdens on cannabis producers.

Hemp Reclassification: A New Threat from the Farm Bill

Cannabis policy challenges extend to the hemp sector as well. The House Committee on Agriculture has proposed an amendment to the Farm Bill that redefines hemp, potentially re-criminalizing certain hemp-derived cannabinoids, such as delta-8 THC, which have become popular in states where recreational cannabis remains illegal. The reclassification would have a significant impact on the hemp industry, which was legalized under the 2018 Farm Bill and has since provided an alternative for those seeking the benefits of cannabinoids without full legalization.

Industry insiders fear that if the Farm Bill amendment passes, it could spell the end of legal hemp-derived products that are currently sold nationwide. While there is some hope for a compromise, possibly influenced by pro-hemp legislators like Representative Thomas Massie, the overall sentiment in Washington appears to be one of heightened regulation and restriction.

Heritage Foundation's Influence on Federal Cannabis Policy

The Heritage Foundation, an influential conservative think tank, has put forward a set of recommendations that could impact the way federal agencies approach cannabis enforcement. The foundation suggests that the federal government should use existing laws to prosecute individuals in states that have adopted more lenient cannabis policies. Specifically, the foundation recommends "revitalizing" the DOJ's authority to prosecute drug-related crimes across state lines and "rigorously prosecuting" activities related to cannabis possession and distribution.

The Heritage Foundation further advises that the DOJ deploy the Racketeer Influenced and Corrupt Organizations Act (RICO) to target patterns of drug-related offenses, which could potentially include cannabis-related activities. Historically, RICO laws have been used to combat organized crime, but their application to cannabis offenses could open the door to heightened federal enforcement.

Rhetoric Versus Reality: President Trump's Position on Cannabis Reform

While former President Trump has expressed support for cannabis reform and has suggested he would leave legalization efforts to the states, there are lingering questions about his administration's intentions. Trump's recently named vice-presidential running mate is less enthusiastic about cannabis reform, and there are concerns about the influence of conservative groups like the Heritage Foundation on the administration's policies.

Moreover, the Heritage Foundation has proposed stricter approaches to drug enforcement, including using RICO statutes against cannabis operations. These recommendations indicate that Trump's stance on cannabis may face opposition within his own party, even if he publicly supports state-level legalization. As the 2024 election approaches, cannabis reform advocates will closely watch Trump's actions to determine if his administration will continue to support the states' rights approach.

The Future of Cannabis Reform in the United States

The outlook for cannabis reform at the federal level remains uncertain. Although public opinion has shifted decisively in favor of cannabis legalization, the conservative backlash represents a formidable obstacle. With influential conservative lawmakers, judicial interpretations, and policy proposals all leaning toward more restrictive measures, cannabis reform advocates face significant challenges.

Efforts to reform federal cannabis policy may continue to gain support from progressive and libertarian factions within both parties, but conservative pressure could slow or even reverse the momentum. For now, the cannabis industry must operate within an unpredictable and sometimes hostile federal landscape, hoping that the next administration will bring more clarity and support for legal cannabis markets.

While the future of federal cannabis reform remains uncertain, advocates and industry leaders will need to work together to counter conservative efforts to undermine progress. With sustained public demand for legalization, the potential for significant tax revenue, and a thriving state-level market, the argument for federal cannabis reform remains as strong as ever. The question now is whether political leadership will prioritize the will of the people or succumb to conservative pressures that seek to maintain the status quo.

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