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5 on 45: Jeff Sessions' marijuana decision favors drug cartels

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(MUSIC)

PITA: You're listening to 5 on 45 from the Brookings Podcast Network, analysis and commentary from Brookings experts on today's news regarding the Trump administration.

HUDAK: I'm John Hudak, and I'm a senior fellow in Governance Studies.

Today Attorney General Jeff Sessions did every black market marijuana dealer in the United States a favor. Mr. Sessions rescinded Obama era guidance known as the Cole memo. The Cole memo instructed U.S. attorneys not to prosecute marijuana related businesses in states that have reformed their laws so long as those businesses complied with state laws and regulations and did not engage in other bad acts such as working with drug cartels or shipping across state lines.

This memo allowed the adult use or recreational cannabis industry to grow, but also to be taxed regulated and monitored. The Attorney General opted instead to allow the black market once again to flourish. He removed states from being able to test product for potency and composition, for pesticides or other chemicals, for mold or other adulterants. He's fired a warning shot that if you're an illegal marijuana dealer who's operated in the shadows undetected by federal law enforcement you should probably be okay. But as a registered marijuana business in a regulated state you now have a DEA target on your back.

The Cole memo was not a perfect policy solution to one of the most vexing federalism questions of this generation, but it was a more effective and efficient one than the drug wars prohibition. Rather than allowing states to continue to do what the federal government would not, experiment with an alternative to prohibition in an effort to achieve better outcomes at a lower cost, the attorney general opted to turn the clock back to a different time with a policy that contravenes empirical evidence on the success of those experiments.

Mr. Sessions' decision was not in response to public opinion. 64 percent of Americans support adult use cannabis reform according to Gallup. 71 percent of Americans oppose federal intervention in states that have legalized marijuana according

to Quinipiac. Eight states, Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington as well as the District of Columbia have legalized cannabis for adult use. Those states include about 20 percent of the U.S. population.

Nor has Mr. Sessions responded to the will of his boss, the president of the United States. Repeatedly on the 2016 campaign trail Mr. Trump offered his support for medical cannabis and said that adult use cannabis should be left up to the states even declaring that he wouldn't send the federal government into states that chose to legalize. In fact in late October 2016, Mr. Trump made those comments in a state, Nevada, that was voting on an adult use ballot initiative just days later.

The Attorney General is probably pleased with himself today. He's stated that good people don't use marijuana, and so he's convinced himself that he's only punishing bad people. He likely believes that he's going to fix the marijuana problem in the United States. In reality his efforts will only affect regulated, tested, state sanctioned marijuana. This move will do nothing to affect demand for marijuana. It can only affect legal supply.

So while the attorney general may be the happiest drug warrior in America today, he has a lot of company. Every black-market marijuana dealer is probably applauding his move. He will increase their customer base while punishing those who stepped out of the shadows and sought to work in a legal market.

Today's a bad day for those who support evidence-based policy. Today's a bad day for those who support states' rights. Today's a bad day for those who support an alternative to the drug war. Today's a bad day for the 64 percent of Americans who support marijuana reform. Today's a bad day for President Trump and his policy positions. Today's a bad day for the tens of thousands of people working in the cannabis industry. Today's only a good day if your name is Jeff Sessions or frankly if you operate a drug cartel.

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