

GROWERTALKS

Corr on Cannabis

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Inching Ever Closer to Cannabis Legalization

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Federal legalization of all types of cannabis in the United States is not a matter of if, it's a matter of when. That's a bold statement—a much bolder statement than I typically make—but I feel confident in making it.

I wrote here in May 2018, “As the public changes in their perception of cannabis use, the treaties, laws and regulations related to cannabis are slowly being changed in response. This change can sometimes be tumultuous, and often erratic in timing, but has momentum because it's from the ground up.”

In the three-plus years since that was written, the grassroots support for legalization of cannabis has only grown. Gallup, Pew Research and Quinnipiac University opinion polls show approximately 70% of Americans think cannabis should be legalized. That's what makes me so sure U.S. federal legalization is inevitable. Laws follow public opinion.

In December 2020, the U.S. House of Representatives took a step toward federal legalization by passing the MORE (Marijuana Opportunity Reinvestment and Expungement) Act. This act would have removed “marijuana” cannabis (>0.3% THC) from the list of scheduled substances, among other things. However, it died in the Senate.

Nevertheless, this was a historic move. The MORE Act was the first time a chamber of Congress voted for legalization of cannabis. It likely won't be the last. Already there are plans to try again this year.

In addition to the MORE Act, two House Republicans have introduced a less-extensive bill with the less memorable name “The Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act.” This bill simply removes marijuana from the Controlled Substances Act, provides banking protection and highlights veteran access to medical marijuana.

Regardless of which act gets the U.S. to legalization, what would legalization look like?

First, what it will not look like is a wide open, free-for-all of cannabis production, distribution, sales and possession. Tobacco and alcohol are reasonable examples on what cannabis legalization might look like. The U.S. federal government has regulations regarding production and sale of tobacco and alcohol, and imposes federal taxes. In addition, individual states have added their own regulations and taxation.

For example, a pack of tobacco cigarettes in the states with the highest taxes will sell for about \$5 more than a pack of the same brand in the states with the lowest tax rates. The difference is state-imposed taxes.

Alcohol taxation is similar. State excise taxes on distilled spirits in Washington state are \$33.22 per gallon. In comparison, Wyoming and New Hampshire have the lowest taxes on spirits in the U.S. However, these states aren't being generous; both are "alcoholic beverage control states." In these states, the sale of spirits is permitted in state alcohol stores only, so the state gains revenue as the retailer.

Canada—which already has federally legalized cannabis production, distribution and sales—provides an example of how cannabis legalization might be implemented in their neighbor to the south. For example, much like Wyoming and New Hampshire have state-run alcohol stores, the province of Ontario has a semi-monopoly on legal cannabis sales. Online cannabis sales in Ontario are only through the Ontario Cannabis Retail Corporation, which also controls wholesale distribution to retail stores.

Whatever happens in the U.S. at the federal level, you can be certain states will want to protect their interests. In just the first quarter of 2021, the state of Illinois collected over \$86 million in cannabis taxes, in comparison to slightly over \$72 million from alcohol sales. Illinois cannabis taxes aren't only imposed at the retail level, but also at the wholesale level. That is a strong incentive to keep cannabis production, and therefore cannabis taxes, in the state.

These taxation issues make U.S. federal legalization of cannabis potentially tumultuous, since production of marijuana is currently occurring in many states that don't have ideal growing conditions for cannabis. For now, federal law prevents the transfer of marijuana across state lines. In contrast, alcohol and tobacco are produced wherever appropriate then shipped across state lines. Investors who have poured hundreds of millions of dollars into cannabis production sites in northern states will pressure their state legislators to give protection to their in-state production to protect their investments. Legislators will also be pressured to keep cannabis jobs in-state.

While no one knows for certain what U.S. legalization will ultimately look like, the MORE Act specifically mentions importation of cannabis into the United States. If transport across international borders is allowed, cannabis production in South America for importation to the U.S. becomes very practical. U.S. cut flower production moved from local greenhouses in most cities across the country to a concentration of growers in Colorado for better light, then to California for light and warmth, then to Colombia and Ecuador for an overall better climate and lower labor costs.

Dried or extracted cannabis is non-perishable with a high value to weight ratio. This combination makes long-distance transportation practical and cost-effective. Many cannabis companies have already set up production in Colombia, with encouragement from the Colombian government. Legalization will bring strong pressure to move to areas with the lowest cost of production. This will set up conflict with local production.

A positive aspect of federal legalization will be the ability of the U.S. EPA to register crop protection products for production of cannabis with a THC content above 0.3%. So long as marijuana is federally illegal, a federal agency like the EPA cannot do anything to give marijuana legitimacy. Since the passage of the 2018 Farm Bill, crop protection products are slowly being registered for production of hemp cannabis. Full legalization will open registration to all of cannabis.

Another benefit of legalization will be more freedom for university research regarding production of cannabis. Most universities would not risk conducting any research on cannabis prior to the Farm Bill of 2014, which allowed limited research with hemp cannabis. The Farm Bill of 2018 further opened up research options with hemp cannabis without running afoul of federal regulations. Research publications regarding cannabis production are starting to appear. That will only increase when federal legalization occurs.

The American Society for Horticultural Science (ASHS) has been one of the outlets for bringing that research to light (disclosure: I'm currently the Industry Division Vice President of ASHS). ASHS publications have included over 60 research reports on cannabis in the last several years. Last year, the annual ASHS conference included over 30 oral or poster presentations regarding cannabis. The conference this year (ashs.org/page/GeneralConference) will include even more. Full legalization would expand opportunities for research on all forms of cannabis.

Federal legalization of cannabis will make production of cannabis more like other crops. After all, when all is said and done, plants is plants. Cannabis will eventually be treated like other crops, with all the joys and sorrows associated with production of any other crop. **GT**

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