U.S. Sen. Cory Booker (D-NJ) introduced a bold measure Tuesday to repeal the federal ban on marijuana and leave governance of the drug in the hands of the states. The Marijuana Justice Act (MJA) declares that the federal Controlled Substances Act (CSA)—the comprehensive federal statute that governs almost every other psychoactive substance—would no longer apply to marijuana. (Congress has already exempted alcohol and tobacco from the CSA.)

Repealing the federal marijuana ban has broad support, at least in principle. Indeed, more than half of Americans now favor legalizing marijuana for adults. Booker has argued that legalization would benefit low-income and minority communities who have been unfairly and disproportionately targeted for arrest and incarceration in the war on drugs. Repeal of the federal ban would also eliminate some of the most pressing problems confronting popular state-licensed marijuana industries, including their lack of access to ordinary banking services.

As Booker’s Republican counterparts in the Senate recently discovered, however, repealing a law—even an unpopular one like the federal marijuana ban—is difficult to do unless you also offer something to replace it. Notably, the MJA neglects to do that. It would leave marijuana largely (if not entirely) unregulated at the federal level. Notwithstanding the popularity of legalization, I suspect few would embrace Booker’s “repeal without replace” approach. After all, every state that has repealed its own marijuana ban has simultaneously replaced that ban with a new body of regulations.

To be sure, marijuana would still be subject to those state regulations even if all federal regulations were repealed. However, legalization proponents may be wary of entrusting this important domain entirely to the states. Consider the issues that might emerge. What if a state slashes its marijuana tax to siphon tax revenues from neighboring states? What if the states adopt confusing and conflicting labeling requirements? What if a state legalizes use by 18 year olds? The states may be unable or simply unwilling to address these and other issues satisfactorily without some federal oversight, coordination, and assistance.

Hence, people may want to know what will replace the federal marijuana ban upon repeal. It is telling that when Congress exempted alcohol and tobacco from the CSA back in 1970, it did not leave those substances unregulated at the federal level; rather, it left them subject to the sundry federal regulations that already existed outside of the CSA.

In short, getting federal marijuana policy “right”—whatever that might ultimately mean—is going to entail a lot more work than simply repeal the existing federal marijuana ban. Successful reform is going to require making some tough decisions about the role the federal government should play in this domain and the regulations it should adopt in lieu of its ban. Hopefully Booker’s proposal, while incomplete, will start a discussion of those issues and prompt Congress to finally tackle a domain that it has largely avoided for the past two decades.

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