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Marijuana Legalization & Extension: A Growing Dilemma

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Marijuana Legalization & Extension: A Growing Dilemma

Abstract

The legalization of marijuana is gaining momentum. Twenty-three states and D.C. have legalized medical marijuana, and two are considering it. Four states have legalized recreational marijuana, and another 11 are considering following their lead. Extension brands itself as extending research to help families and small farmers grow crops. However, because Extension receives federal funding, Extension has decreed that we not help patients, caregivers, growers, processors, or retailers raise and harvest this finicky crop. We seek to be relevant. Do we need to find a way to help our urban and rural clients deal with this complicated, current, and controversial issue?

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Background

November 4, 2014, Alaska voted to legalize recreational marijuana. The next day Extension agents' phones were ringing off the hook with questions about growing marijuana (S. Brown, personal communication, November 6, 2014). These calls raised many questions about Extension's role in providing assistance growing marijuana.

After the 2014 election, medical marijuana was legal in 23 states and D.C. (23 legal medical marijuana states, 2014) and is being considered in an additional two states (Two states with pending legislation to legalize medical marijuana, 2014). Additionally, municipal voters in Michigan and Maine voted to de-penalize medical marijuana, while voters in New Mexico and Massachusetts said "yes" to non-binding advisory questions on medical marijuana (State, local marijuana legalization measures win big on election day, 2014).

Colorado and Washington legalized recreational marijuana in 2012 (Garvey & Yeh, 2014), Alaska and Oregon legalized it in 2014 (Marijuana legislation passes in Oregon, Alaska, 2014), and another 11 states are considering following their lead (Ross, 2014).

Recent polls report public opinion supporting legalizing medical marijuana growing from 12% in the 1970s to 58% in 2013 (Sacco, 2014); another survey of polls between 1999 and 2010 found between 60% and 85% of respondents supported medical marijuana (Eddy, 2010).

All of this adds pressure on state and federal legislators, federal agencies, and federally funded institutions to support the patients, consumers, and business owners involved in this changing landscape.

Reflecting this pressure is the Obama Administration's directive to U.S. Attorneys that they should use their limited resources to focus on issues other than individuals who are complying with state-sanctioned medical marijuana programs and recreational marijuana laws (Garvey & Doyle, 2014). Additionally, a recent congressional action prohibited the Department of Justice from using appropriated monies to prevent states and D.C. from "implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana" (<https://beta.congress.gov/amendment/113th->

[congress/house-amendment/748](#)).

Clearly attitudes are changing about medical and recreational marijuana, and this change is gaining momentum.

The Legal Theory

The legal theory that allows states to approve legislation that appears to be in conflict with federal legislation is called the "supremacy clause" (Garvey & Doyle, 2014). The supremacy clause "elevates the U.S. Constitution, federal statutes, federal regulations, and treaties above the laws of the states" (Garvey & Doyle, 2014 p. 6). Therefore the federal laws about marijuana trump state laws (Garvey & Doyle, 2014).

Resolving conflicts created by differing state and federal regulations is addressed through "preemption," which is a matter of Congressional choice. When Congress prefers that the state and federal laws co-exist, state law only gives way when it is directly in conflict with the federal law (Garvey & Doyle, 2014).

When Congress prefers preemption, state law must give way in one of two ways:

1. "impossibility preemption," which means it is "physically impossible" to comply with both federal and state laws, or
2. "obstacle preemption," where the state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'" (Garvey & Doyle, 2014 p. 6).

The Controlled Substances Act controlling marijuana at the federal level declares a preference for allowing state and federal laws to stand together. The courts have fairly consistently found that since states don't require residents to violate federal law and consume marijuana, they are not in conflict (Garvey & Doyle, 2014).

However, that does not nullify the federal laws. Therefore, people can still be prosecuted for marijuana cultivation, distribution, or possession (Garvey & Doyle, 2014). These violations carry penalties that range from a misdemeanor for possession to a felony and incarceration for cultivation (Federal laws and penalties, 2014).

A Growing Dilemma

Different states have different growing and distribution systems. These range from patients or caregivers growing their own marijuana to large-scale growers and processors selling to for-profit dispensaries. So we have patients, caregivers, and businesses struggling to grow and process a finicky plant that is prone to mildew and mold (Hallowell, 2013).

Studies reveal that growers are using pesticides to manage mold, mildew, and bugs (Sullivan, Elzinga, & Raber, 2013). Research about how to best grow marijuana without pesticides, how to detect the presence of pesticides, and the best way to ingest medical marijuana to minimize the potential impact of pesticides is important information that Extension agents and specialists should be extending to their clients. A pest management specialist from Maine acknowledged the challenge of growing marijuana, but it was a dispensary salesman that recommended growing it with chives or garlic to provide a natural barrier (Peeples, 2013).

With recreational marijuana, Coloradans can either grow their own marijuana or purchase it from large growers (Garvey & Yeh, 2014), raising the same issues. Since consumers can't call their usual sources, like Extension (Martin, 2014), for information like this, many private companies are providing training on cultivation, harvesting, processing, and managing the money to current and potential growers (Holthouse, 2014; Martin, 2014).

Extension's Role

All of these issues raise the question about Extension's role in helping patients, families, caregivers, large or small-scale producers, processors, or dispensaries.

Does advising people on how to grow marijuana put Extension agents and specialists at risk of being charged as a co-conspirator? Does it put one's federal funding at risk? These are questions that will be answered in court, and I presume most of us don't want to be that test case. In 2010, when legalizing recreational marijuana was being considered in Colorado and medical marijuana was legal, people started contacting their Extension offices and asking master gardeners for advice (Roberts, 2010).

Herein lies the growing dilemma for Extension agents, specialists, directors, and funders. Extension is a recognized resource for assistance in growing plants; they receive federal, state, and county funding for this and other services. Not surprisingly, Colorado, Washington, and Alaska Extension developed policies forbidding Extension personnel and master gardeners from assisting the public by providing information about how to grow marijuana (Roberts, 2010; UA Outreach, personal communication, November 11, 2014), including informing Extension staff that they "assume personal liability for such action" (Roberts, 2010, p. 2).

USDA's NIFA program uses two mechanisms to accomplish their mission of advancing knowledge. One of these, the National Program Leadership, seeks to help: "states identify and meet research, extension, and education priorities in areas of public concern that affect agricultural producers, small business owners..." (<http://www.csrees.usda.gov/about/background.html>, July 1, 2014). Clearly, helping patients and small businesses grow marijuana falls within this mechanism.

Others have written in the *Journal of Extension* about Extension's increasing role in helping communities deal with controversial issues (Patton & Blaine, 2001), conduct controversial studies (Bailey, 2002), and use "cutting-edge methods, equipment, technology, tools, and ideas to help address high priority issues of people in local communities" (Sobrero & Craycraft, 2008, p. 2).

How do we reconcile these goals to be relevant, cutting-edge, and helpful to communities with controversial issues with a directive to stand aside on this very important and controversial local, state, and national issue?

As an economic development specialist, I teach and advise small businesses. Should I refuse to assist a student attending a Writing Your Business Plan class if she discloses that she is going to be a state-sanctioned marijuana distributor, a registered caregiver, or producer? Shall I hand her a business plan for "growing tomatoes"? Ask her not to utter the "m" word in class?

What about my Extension community development colleagues who help counties with difficult conversations or zoning issues? Many counties must decide whether to allow marijuana growers in their counties, how to tax them, how to regulate them, what zoning they will and will not allow marijuana to be grown or sold in (Johnson, 2014). This would normally be a role for county community economic development Extension agents. What if a county is negotiating an annual Extension agent contract and wants to include assistance with this issue and to pay for it with county money?

What if a business or ag student wants to do a research project on the medical or recreational marijuana business? What about my researching the topic for this article?

And what about urban Extension? We have been working to be relevant in urban communities (Bull, Cote, Warner, & McKinnie, 2004). This certainly looks like an opportunity for Extension to look edgy and relevant, especially in urban environments.

Conclusion

In conclusion, this is a complicated issue with a lot of moving parts and potentially a big upside and a big downside. I'm reasonably certain none of us want to find ourselves in federal court because we helped someone learn how to grow marijuana or how to put together a cash flow statement.

Alternatively, I don't think we should just run away because there is some risk involved. We have county partners who need our help. We have patients and caregivers who need our help to grow an herb that makes them more comfortable at a difficult time in life. We have small entrepreneurs who need our help creating and executing sound business plans. I look forward to a robust conversation on this topic.

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