

How Uncle Sam Lauanders Marijuana Money

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Global Research, January 24, 2018

Region: [USA](#)

Theme: [Intelligence](#), [Law and Justice](#)

In a blatant example of “do as I say, not as I do,” the US government is profiting handsomely by accepting marijuana cash in the payment of taxes while imposing huge penalties on banks for accepting it as deposits. Onerous reporting requirements are driving small local banks to sell out to Wall Street. Congress needs to harmonize federal with state law.

Thirty states and the District of Columbia currently have laws broadly [legalizing marijuana](#) in some form. The herb has been shown to have [significant therapeutic value](#) for a wide range of medical conditions, including cancer, Alzheimer’s disease, multiple sclerosis, epilepsy, glaucoma, lung disease, anxiety, muscle spasms, hepatitis C, inflammatory bowel disease, and arthritis pain. The community of [Americans who rely on legal medical marijuana](#) was estimated to be 2.6 million people in 2016 and includes a variety of mainstream constituency groups like veterans, senior citizens, cancer survivors, and parents of epileptic children. Unlike patented pharmaceuticals, which are now the [leading cause of death from drug overdose](#), there have been [no recorded deaths from marijuana overdose](#) in the US. By comparison, alcohol causes [30,000 deaths annually](#), and prescription drugs *taken as directed* are estimated to [kill 100,000 Americans per year](#).

Under federal law, however, marijuana remains a Schedule I Controlled Substance – a “deadly dangerous drug with no medical use and high potential for abuse” – and its possession remains a punishable offense. On the presidential campaign trail, Donald Trump said the issue of marijuana legalization “should be up to the states,” continuing the “hands off” policy established under President Obama. Under the 2013 Cole Memorandum, the Department of Justice said it would not prosecute individuals and companies complying with robust and well-enforced state legalization programs. But on January 4th, Attorney General Jeff Sessions rescinded that memo and gave federal prosecutors the authority to pursue marijuana cases at their own discretion, even in places where the herb is legal under state law. The action has made banks even more afraid to take marijuana cash, which can be prosecuted as illegal “money laundering,” an offense that can incur stiff criminal penalties.

The Government Has “Unclean Hands”

[As explained by Dr. Richard Rahn](#), author of *The End of Money and the Struggle for Financial Privacy*:

Money laundering is generally understood to be the practice of taking ill-gotten gains and moving them through a sequence of bank accounts so they ultimately look like the profits from legitimate activity. Institutions, individuals, and even governments who are believed to be aiding and abetting the practice of money laundering can be indicted and convicted, even though they may be completely unaware that the money being transferred with their help was of criminal origin.

The law has focused on banks, but all sorts of businesses accept money without asking where it came from or being required to report “suspicious activity.” As Rahm observes, even governments can be indicted and convicted for money laundering. Strictly construed (as Attorney General Sessions insists when interpreting the law), that means the US government itself could be indicted. In fact the US government is the largest launderer of marijuana cash in the nation. The IRS accepts this tainted money in the payment of taxes, turning it into “clean” money; and it is not an unwitting accomplice to the crime. Estimates are that marijuana business owners across the U.S. [will owe \\$2.8 billion in taxes](#) to the federal government in 2018. The government makes a massive profit off the deal, snatching [up to 70 percent of the proceeds](#) of the reporting businesses, as opposed to the more typical rate of 30 percent. It does this by branding marijuana businesses criminal enterprises which are not entitled to deduct their costs when reporting their income. This is not only a clear case of the unequal protection of the laws but is a clear admission by the government that it is knowingly accepting illegal funds. The government is a principal beneficiary of a business the government itself has made illegal.

Under those circumstances, both marijuana businesses and banks should be able to raise the “*unclean hands*” defense. [As summarized in Kendall-Jackson Winery, Ltd. v. Superior Court](#) (1999), 76 Cal.App.4th 970, 978-79:

The defense of unclean hands arises from the maxim, “He who comes into Equity must come with clean hands.” The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. . . . The defense is available in legal as well as equitable actions. . . . The doctrine promotes justice by making a plaintiff answer for his own misconduct in the action. It prevents a wrongdoer from enjoying the fruits of his transgression.

The government is enjoying the fruits of money it considers “dirty.” It has unclean hands, a defense against prosecuting others for the same crime.

Should “Money Laundering” Even Be a Crime?

In an article titled “[Why the War on Money Laundering Should Be Aborted](#),” Dr. Rahn asks whether money laundering should even be a crime. It became a criminal activity in the US only in 1986, and in many countries it still is not a crime. Banks operating in the US must now collect and verify customer-provided information, check names of customers against lists of known or suspected terrorists, determine risk levels posed by customers, and report suspicious persons, organizations and transactions. The reporting requirements are so burdensome and expensive that they have caused many smaller banks to sell out to larger banks or close their doors. According to Dr. Rahn:

[I]t has failed to produce the advertised results and, in fact, has not been cost effective, has resulted in wholesale violations of individual civil liberties (including privacy rights), has violated the rights of sovereign governments and peoples, has created new opportunities for criminal activity, and has actually lessened our ability to reduce crime.

. . . Banks are required to supply the government with not only Currency Transaction Reports but also Suspicious Activity Reports. These reports impose huge regulatory costs on banks and require bank employees to operate as police officers. As a result, the total public and private sector costs greatly

exceed \$10,000,000 per conviction. This whole effort not only does not make any economic sense, but is clearly incompatible with a free society. The anti-money laundering laws allow almost complete prosecutorial discretion.

[One small banker complained](#) that banks have been turned into spies secretly reporting to the federal government. If they fail to comply, they can face stiff enforcement actions, whether or not actual money-laundering crimes are alleged. [In 2010, one small New Jersey bank](#) pleaded guilty to conspiracy to violate the Bank Secrecy Act and was fined \$5 million for failure to file suspicious-activity and cash-transaction reports. Another small New Jersey bank closed its doors after it was hit with \$8 million in fines over its inadequate monitoring policies. The cost of compliance and threat of massive fines for not complying have been major factors in the collapse of the community banking sector. The number of community banks has [fallen by 40 percent](#) since 1994 and their share of U.S. banking assets has fallen by more than half, from 41 percent to 18 percent.

“Regulation is killing community banks,” Treasury Secretary [Stephen Mnuchin said](#) at his confirmation hearing in January 2017. If the process is not reversed, he warned, we could “end up in a world where we have four big banks in this country.” That would be bad for both jobs and the economy.

“I think that we all appreciate the engine of growth is with small and medium-sized businesses,” said Mnuchin. “We’re losing the ability for small and medium-sized banks to make good loans to small and medium-sized businesses in the community, where they understand those credit risks better than anybody else.”

If the goal of the anti-money laundering statutes is to identify and deter criminal activity, strictly enforcing the law could actually backfire in the case of state-legalized marijuana businesses. As noted in [a January 9 article](#) in *The Daily Beast*:

Marijuana businesses have to register and incorporate in states and that puts them on the IRS radar. . . . Sky-high federal taxes on top of state taxes can make it almost impossible to operate a legal business. . . . If the government fails to cut businesses a break, legal marijuana could be sold on the black market to dodge taxes.

On the black market, cash proceeds can be dispersed in a way that avoids banks and makes the money hard either to trace or to tax.

Federal Law Needs to Be Changed

With more than half the states legalizing marijuana for medical purposes, Congress needs to acknowledge the will of the people and remove this natural herb from the Schedule I classification that says it is a deadly dangerous drug with no health benefits. The Tenth Amendment gives the federal government only those powers specifically enumerated in the Constitution, and regulating medical practice is not one of them. [Federal courts have held](#) that the federal Controlled Substances Act does not allow the federal government to usurp states’ exclusive rights (pursuant to their inherent police powers) to regulate the practice of medicine.

H.R. 1227, the Ending Federal Marijuana Prohibition Act, sponsored by Virginia Republican Thomas Garrett and 15 cosponsors, would remove marijuana from Schedule I and eliminate federal penalties for anyone engaged in marijuana activity in a state where it is legal. Congress just needs to pass it.

In its zeal for eliminating burdensome, costly and ineffective regulations, the Trump administration might also consider lightening the heavy reporting burden that is killing community banks and the local businesses that have traditionally relied on them for affordable credit. On Tuesday, January 16th, [a bipartisan coalition of state attorneys general](#) sent a letter to leaders in Congress requesting advancement of legislation such as the [Secure and Fair Enforcement \(SAFE\) Banking Act](#) to “provide a safe harbor” for banks that provide financial products or services to state-legal marijuana businesses. If the government can accept marijuana money in the payment of taxes, banks should be able to accept it to keep track of it and prevent the crimes associated with storing and transporting large sums of cash.

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This article was originally published on [Truthdig.org](#).

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