

United States Senate Committee on Banking, Housing, and Urban Affairs
Challenges for Cannabis and Banking: Outside Perspectives

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Testimony of Senator Cory Gardner

Thank you, Mr. Chairman.

Chairman Crapo, Ranking Member Brown, my friends and colleagues. Thank you for the opportunity to speak before you.

Let me start by saying thank you for holding this hearing. It is an important step toward the federal government waking up to the reality that the cannabis issue is not going away and needs action.

I know this is a difficult topic. But the American People sent us here to deal with difficult topics.

There has been a dramatic shift in Americans' views of cannabis in recent years. Polling shows that about 65% of Americans support legalization of marijuana. 93% support medical marijuana. In fact, majorities of both parties support legalization. In a time when all the talk is about how divided we are, it's hard to find that sort of support for an issue.

Given that support, it shouldn't be surprising that the vast majority of states have changed their laws. 47 states now allow some form of cannabis. (I recognize that my good friends from the 3 that have not – Idaho, Nebraska, and South Dakota – are on this committee.) That represents more than 95% of our population living in a state with laws allowing some form of cannabis.

33 states have legalized medical marijuana. 11 allow regulated adult use.

This is happening in the bluest of blue states, the reddest of red, and – in Colorado's case – the purplest of purples. It's happening in traditionally progressive states like Oregon, Massachusetts, and California. It's happening in fiercely independent states like Colorado, Alaska, and Maine. It's happening in conservative states like North Dakota and Georgia. It's happening in rust belt states like Pennsylvania and Ohio.

Last year alone, Michigan, Missouri, Oklahoma, Utah, and Vermont all adopted or expanded marijuana programs.

In short, the states are leading on this issue, and the federal government has failed to respond. It has closed its eyes and plugged its ears and pretended the issue will go away. It won't.

This disconnect between federal and state marijuana laws has become, as the Attorney General has testified, both “intolerable” and “untenable.”

The dramatically expanding cannabis industry presents real challenges for our nation. I have been a skeptic about cannabis legalization. It is no secret that I opposed legalization in Colorado in 2012.

I was concerned about the effects of legalization on Colorado’s youth and public safety. I was leery of breaking with the federal government. I was uneasy about adding another intoxicant in our culture, and I did not – and still do not – want to encourage my own children to use marijuana.

Several years into legalization in Colorado, I can say that the sky hasn’t fallen. There are challenges to be sure: Colorado has seen an increase in transient populations; there are concerns about traffic safety and hospitalizations; and cannabis has been illegally trafficked into neighboring states.

But according to a recent JAMA Pediatrics report, youth use is about 10% lower in legalized states. One strong theory as to why that’s the case is that legal dispensaries both force out illegal sellers and enforce age limits. So youth actually have less access to marijuana.

The data on crime are mixed. Marijuana offenses are down. Colorado has also experienced an increase in violent crime, but that’s likely a result of an increase in transient populations moving to the state.

At the same time, the state has brought in over \$1 billion in tax revenue. Last year alone, the state received more than \$266 million marijuana taxes. Millions of those dollars are ending up in Colorado schools.

In short, the sky is not falling in Colorado.

Instead, what makes the current situation intolerable and untenable is the disconnect between federal and state law.

For instance, every single state-legal cannabis transaction in Colorado is federally illegal. That means the dollars involved are the proceeds of an unlawful transaction under the federal money laundering statutes. That means that all of the different parts of our economy that connect to any legitimate business – plumbers, electricians, lawyers, accountants, landlords, etc. – risk becoming federal criminals for serving a client.

That also means that the \$1.5 billion industry is nearly all cash. Banks will not accept industry money for fear of regulatory action or federal forfeiture.

Keeping those dollars out of banks means we lose the ability to trace where the dollars go. It also makes it harder to ensure all taxes are being paid. It makes it easier for criminals in the illicit market to pose as legitimate. And it leaves hundreds of millions of dollars of cash in the state.

For example, the state Department of Revenue has one location that accepts cash. So business owners in the western part of the state often have to drive 5 or more hours with tens of thousands of dollars in cash just to pay their taxes.

That creates a genuine public safety problem. Stockpiles of cash make the industry a target for thieves. In 2016, a 24-year-old former Marine was tragically shot and killed while on duty as a security guard at a dispensary.

And we are making it hard for these businesses to comply with the law. A few months ago a partner at a major national law firm told me that the firm's bank accounts were going to be shut down because they counsel state-legal cannabis clients.

I've also heard from the city officials in the town of Desert Hot Springs, California. For them, lack of banking means that when they take in a million dollar bond for a cannabis business, it takes days to count the cash. It takes several employees off their normal work and it requires extra security in the city offices.

All of this is just scratching the surface of the financial services problems caused by the federal/state disconnect. I haven't mentioned the problems with research or veterans' access or the EPA refusing to certify pesticides for use on cannabis or the FDA's struggle to police advertising claims or the confusion created for law enforcement or any of the other myriad problems that contribute to this intolerable and untenable situation.

We have to act.

Our failure to act seems to be grounded in two incorrect assumptions. The first is that we can continue prohibition. We can't. We are a government of the People and the People have changed their views. So our laws much change.

The second is that we can come to a national consensus for full-throated legalization in the near-term. We can't. There are still too many unanswered questions. Many states that have legitimate concerns. If those seeking reform insist on swinging for the fences, they will strike out and lose the chance for real improvement.

I believe Senator Merkley recognizes this. I appreciate his efforts to provide real concrete improvement for the financial services industry with the SAFE Banking Act.

I believe Senator Warren recognizes this. I appreciate her efforts to forge a compromise to allow the states to move at their own pace with the STATES Act.

And I believe you, Mr. Chairman, Ranking Member Brown, my friends on the committee, will see through this hearing that we must act. Thank you for holding this hearing, and thank you for the opportunity to speak.