

Hi, my name is Michael Vitiello. I am a professor of Law at University of Pacific, McGeorge School of Law. This In Brief focuses on Attorney General Sessions' recent announcement about enforcement of federal marijuana laws and rescinding what is known as the Cole memorandum.

Quick reminder: all use, possession or sale of marijuana violates federal law.

Why did states like Colorado, Washington and now California believe that they could legalize recreational use of marijuana?

In 2013, after Colorado and Washington legalized recreational marijuana, James Cole, an attorney in the Department of Justice, issued a memo stating the federal policy concerning states' efforts to legalize recreational marijuana.

The Department of Justice's position was that as long as states followed certain guidelines, like keeping marijuana out of the hands of minors and keeping drug cartels out of the business, the federal government would let states regulate their marijuana industries.

That memo and a similar memo in 2009 dealing with medical marijuana have encouraged investors, now pumping billions of dollars into the marijuana businesses.

During the 2016 presidential campaign, candidate Trump seemed to endorse a similar position to the Obama administration – in effect, he said, let states regulate as they see fit.

But he chose an Attorney General with a long history of opposing marijuana – candidly, Jeff Sessions has made statements, for example, about marijuana and violent crime that are widely rejected as untrue.

Over the past year, Sessions and members of the Department of Justice have sent out uncertain signals about what the government's position will be on state regulation of marijuana.

That ended last week when the Attorney General announced that he is rescinding the Cole memo.

That has sent waves of uncertainty in the industry – for example, marijuana publically traded companies' saw their stock prices decline sharply.

But are those fears warranted? Almost immediately, stock prices started to rise again as commentators and politicians weighed in on the effect of Sessions' decision.

Here are my thoughts on the long term impact of decision to rescind the Cole memo:

The Department of Justice has significant tools to use if it chooses to use them, including criminal prosecutions that could lead to long prison terms, and forfeiture that would allow the government to seize assets or marijuana industry members.

It may do so – but at the same time, the Department of Justice has other more important priorities, including immigration and addressing the opioid epidemic.

Further, many of us wonder whether Sessions has actually helped supporters of legalizing marijuana – Democratic members of Congress, especially from states that have legalized recreational marijuana oppose Sessions' action. But now, so have a number of Republicans.

No surprise that Nancy Pelosi is not only pushing for the expansion of a rider in the budget that prevents US attorneys from prosecuting medical marijuana users in states where it is lawful – she would actually expand that to include recreational marijuana. Pelosi is also pushing for bipartisan legislation to leave regulation of marijuana to the states.

Democratic Senator Ron Wyden from Oregon has said that any budget deal should include similar limitations.

But so too have some Republicans – Iowa Congressman Rod Blum, for example, is going to cosponsor legislation to let states regulate as they see fit.

Colorado Senator Cory Gardner, a Republican, has threatened to hold up in committee any nominees for positions in the Department of Justice. I could give you more examples of legislators who are now pushing back against Jeff Sessions.

I think this signals a sea change by the way because until now, no member of Congress had really spoken out in favor of the Cole memo and yet now many are speaking out.

So what's the bottom line? Smart money says that given limited enforcement resources, the government may try to do some selective enforcement – but last week Attorney General Sessions did not say that the US Attorneys would start enforcing marijuana laws.

And some US Attorneys seem unwilling to their change policies. For example, the US Attorney for Colorado has already announced that he will not change course.

My own prediction, for what it is worth, is that the industry is already too big to fail – investors for better or worse have political clout. As I was quoted in a Time Magazine article on this issue, the money in the industry is not blue money or red money, it is green money – stay tuned because we all know that money talks.