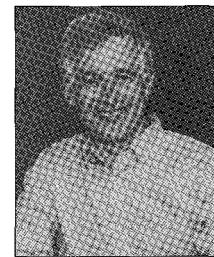


Freedom, Drugs, and the Workplace

BY DAVID R. HENDERSON



Imagine that you work for an employer whom you respect, and you like your job. Then you find out that your employer uses marijuana for a medical condition. On further inquiry, you learn that he uses it completely legally and, as far as you can tell, it doesn't affect his performance as an employer. Should you be allowed to quit your job?

I'm guessing you answered yes. I wouldn't even be surprised if you became incensed at my question. I can imagine some readers saying, "I should be able to quit even if it's just because my employer's eyes are blue."

I, too, think an employee should be able to quit for any reason. It might be unfair for him to quit and leave his employer in the lurch. It might be narrow-minded, even prejudiced, to quit just because the employer uses medical marijuana. But an employee has the right to be unfair: it's his life, and it's his to do what he wants with it as long as what he does is peaceful. Quitting a job is peaceful.

By defending a person's right to quit, I'm defending freedom of association. People should be free to associate with those who wish to associate with them. Employment is a form of association. If you oppose the right to quit, then you are supporting something akin to slavery. The essence of slavery is not that slaves don't get paid—many slaves were paid—but that they are not in "their" jobs voluntarily.

Simple symmetry and fair treatment demand that employers be free to associate, too. Therefore employers should be free to fire someone for whatever reason.

The most common argument against symmetrical treatment is that employers have more bargaining power than employees. The employer, according to this

argument, has many potential choices of whom to hire, whereas the employee has fewer choices of where to work. Although this might often be true, there are many counterexamples. Imagine the loyal employee who has been with the firm 25 years and knows more about the firm's customers, products, and employees than even the firm's owners do. Such an employee could easily have more bargaining power than the employer. Should an employer in such a case be able to

force the employee to keep working? I know of no one who believes that, which means bargaining power is irrelevant. Even when the employee has more bargaining power than the employer, the employee should be able to quit.

Unfortunately, two organizations in the United States that generally lobby for freedom are hostile to freedom of association for employers. The two organizations are the Drug Policy Alliance (DPA) and the Marijuana Policy Project (MPP). The DPA's web site states: "DPA is the nation's leading organization working to end the war on drugs. We envision new drug policies based on science, compassion, health and

human rights and a just society in which the fears, prejudices and punitive prohibitions of today are no more."

The MPP's web site advocates "[P]ublic policies that (1) allow for the responsible medical and non-medical use of marijuana, and (2) minimize the harms associated with marijuana consumption and the laws that manage its use."

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In short, both the DPA and the MPP favor more freedom to use drugs.

I have donated to both organizations to support their pro-freedom work and helped one of them decide whether to make a major grant for the study of marijuana use. But their recent attacks on the freedom of those who think differently from the way they and I think are disappointing. In January the California Supreme Court, in *Ross v. Ragingwire Telecommunications, Inc.*, found that an employer may fire an employee for a positive drug test even if the employee is using the drug legally. An article in *Drug Policy News*, January 25, 2008, quotes Daniel Abrahamson, the director of the DPA's Office of Legal Affairs, as follows:

"We're disappointed that the Court's decision allows an employer to intrude into a doctor-patient relationship. It puts many patients in the difficult position of having to choose between their jobs and their doctor-recommended medical treatment."

Had I been the employer, I would not have fired the employee, Gary Ross. But that's not the issue. The issue is whether an employer has the *right* to fire an employee even if doing so is mistaken or prejudiced. Interestingly, Abrahamson didn't address the issue directly, but instead muddled the waters by raising the doctor-patient relationship. But Ragingwire didn't intrude on this relationship at all. It simply made clear that it did not want to hire someone who uses medical marijuana. If I refuse to work for an employer who uses medical marijuana, I don't interfere with his relationship with his doctor.

Another Attack on Freedom of Association

After the Supreme Court's decision, another organization, Americans for Safe Access, began lobbying

for AB 2279, a bill in the California state legislature to prevent employers from firing employees who test positive for marijuana. In an April e-mail to its members, including me, Karen O'Keefe, MPP's assistant director of state policies, urged us to support the bill. In other words, the MPP urged its members to support a further restriction on freedom of association for California employers.

On principle these attacks on freedom by self-styled friends of freedom are wrong. They are also frustrating for many of us who want people to be free to take whatever drugs they wish. The reason is that the fight for drug freedom has been a climb

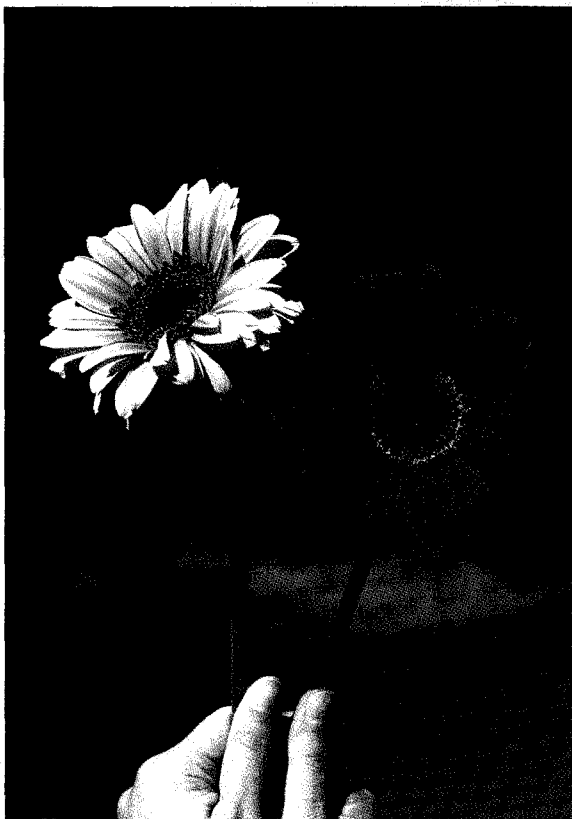
up a very steep hill. After almost a century of drug prohibition and government propaganda, most Americans are badly misinformed about and prejudiced against drugs. Yet we have seen glimmers of hope as legislators and voters in state after state have tried to loosen the government's stranglehold on marijuana.

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advocating drug freedom, I have always assured people that I also advocate freedom of association for employers. But the Drug Policy Alliance and the Marijuana Policy Project have confirmed some of the worst fears of legalization's opponents. The impression one gets is that these two organizations care only about drug freedom and are willing to trample on other freedoms. If they succeed in further restricting freedom of association, then, whatever their intent, they will make the drug-legalization hill even steeper.





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