

Former Top Schumer Staffer Highlights Reasons To Be Optimistic About Marijuana Banking Passing This Session (Op-Ed)

“The cost-benefit analysis of deciding how to allocate floor time actually tilts in favor of cannabis this Congress in a way that it didn’t before.”

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With the recent reintroduction of the Secure and Fair Enforcement (SAFE) Banking Act, Congress is once again engaged in an effort to achieve a meaningful breakthrough on federal cannabis reform.

Understandably, many have serious doubts as to whether this time will be any different than previous iterations while others are likely convinced that it won’t be.

After spending the past six years working to advance this issue in Congress as the lead cannabis policy staffer for Senate Majority Leader Chuck Schumer (D-NY), I see reasons for considerable optimism that this time is different—finally.

The Window Remains Open

Much has been said about last year’s failed effort to pass SAFE and what it means for the future of federal reform. A common assessment is that Democrats missed their window as united control of the federal government slipped away without passage of significant cannabis reforms. Because Democrats are more supportive of cannabis reform than Republicans, it would stand to reason that a Democratic trifecta represents the best, if not the only, window for meaningful progress. This assessment overlooks a few key features of congressional agenda setting and the ways in which they intersect with cannabis policy and politics.

United government inevitably leads to much higher expectations from the coalitions allied with the party in power and critical to the preservation of their majorities. The need to respond to varying constituencies enticed by the seemingly expansive realm of the possible creates crosscutting pressures that have implications for legislative proposals on any number of issues. Cannabis advocates and operators were simply one of the dozens of constituencies whose high hopes were either significantly lowered or completely dashed by the harsh realities of the legislative process.

One such reality is that there is no more valuable commodity in politics than floor time in the U.S. Senate. Because of the Senate’s arcane rules and the increasing polarization that makes every matter before the body seem more consequential, the simplest measures can take a full week or more to process through regular order. Bills that are even mildly controversial can take several weeks.

This creates a dynamic in which every decision to take up one measure is simultaneously a decision not to take up scores of other very important priorities. Advocates and interest groups are tasked not only with arguing the merits of their issue, but also making the case as to why it should be prioritized over other very

deserving matters. This dynamic also results in issues that are less controversial but still consequential receiving priority. This is due their ability to be considered under a “time agreement,” a unanimous consent agreement that limits the time for debate on a bill and ensures that a single bill won’t eat up weeks of floor time. The inability to obtain these agreements on more hotly contested issues, like cannabis reform, is a significant complicating factor in efforts to move legislation through the Senate.

As counterintuitive as it may seem, this all points to the opportunity that divided government presents. With the House and Senate divided, the ability to make progress on an issue doesn’t require bipartisan consensus, but it does require meaningful bipartisan agreement. Cannabis reform is one issue on which such agreement exists. This means that the cost-benefit analysis of deciding how to allocate floor time actually tilts in favor of cannabis this Congress in a way that it didn’t before. Put simply, the fact that cannabis reform is competing with fewer issues for space on the congressional agenda opens up the opportunity to move legislation, particularly through regular order.

A Viable Deal Has Been Cut

With the opportunity for movement still intact, proponents of reform must determine how best to seize it. The answer to that question lies in the aforementioned “failed effort” to pass SAFE in which the contours of a compromise that has a meaningful shot at Senate passage were revealed.

Important changes were made to SAFE to address concerns on the Left that historical disparities in traditional lending portend difficulty for entrepreneurs from disadvantaged communities in accessing capital even with SAFE’s protections in place. Provisions were added to ensure that the income of workers and operators in the cannabis industry would qualify for consideration for federally backed mortgages, a meaningful pro-worker addition.

Further revisions were made to address concerns on the Right with regards to money laundering and the challenge of keeping illicit cash from being funneled into the financial system. These are meaningful improvements that underscore the value of working through the rigors of the legislative process.

Make no mistake, however, the legislative process continues. The reintroduced bill did not include additional provisions that were part of the compromise that came to be known as “SAFE Plus”, like the Harnessing Opportunities by Pursuing Expungement (HOPE) Act or the Gun Rights and Marijuana (GRAM) Act. This was due to jurisdictional limitations of the Senate Banking Committee, where SAFE will be considered, rather than a change in strategic thinking.

Sens. Jeff Merkley (D-OR) and Steve Daines (R-MT) released a statement at the time of introduction confirming that there will be an opportunity to add these provisions when the legislation is considered on the Senate floor. The importance of these provisions can’t be overstated as Leader Schumer last week on the Senate floor reaffirmed that HOPE in particular is a critical piece of the puzzle for he and other criminal justice-minded Democrats.

With the window still open and a viable compromise on the table, the critical question is not whether this time will be different but what can be done to ensure that it is. As is always the case, that question will largely be answered by the industry representatives and reform-minded advocates who have been working to elevate this issue in Washington for years.

The Right Coalitions Have Been Formed

One of the best pieces of advice I’ve received thus far in my career is that if everyone in your coalition agrees, your coalition isn’t big enough. Prior to last Congress, the coalition working for meaningful cannabis reform both inside and outside of Congress simply wasn’t big enough. The cannabis industry’s presence in

Washington is simply too small relative to those competing for priority on the federal agenda for its proponents to not put aside legitimate disagreements in order work in tandem towards shared objectives. I believe that dynamic has changed and the implications for that change are significant.

Inside Congress, a bipartisan group of senators have worked together for more than a year to chart a path forward. They (and their staffs) have worked diligently to craft a deal with enough additions to make those who deemed previous versions of SAFE insufficient feel comfortable moving forward while not adding so much that some of the bill's more tepid supporters back away.

On the outside, grassroots advocacy organizations on the Left and Right have been working to forge partnerships that will be critical not only to the passage of SAFE, but also in future iterations of this fight. Meanwhile, the various trade associations who represent the interests of cannabis operators of all sizes in DC have been working to merge their efforts and grow their collective presence in order to maximize the effectiveness of their advocacy.

The biggest reason for optimism on federal cannabis reform is the continued commitment of advocates who have learned from the failures of the past and are adapting in real time rather than simply accepting defeat and bemoaning inaction. The ability of advocacy organizations on the Left and Right to put aside disagreements and focus on shared objectives, combined with a demonstrated willingness from those who represent the cannabis industry to also seek out common ground with these advocates, will go a long way in determining the success or failure of this and all future cannabis policy fights.

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