DATA FOR *PROGRESS*   THE JUSTICE COLLABORATIVE INSTITUTE   FJP FAIR AND JUST PROSECUTION

THE CASE FOR COMPREHENSIVE MARIJUANA REFORM:
Policies & Public Opinion

August 2020

INTRODUCTION

Although American voters from across the political spectrum overwhelmingly support legalizing marijuana—and 38 states and Washington, D.C. have already decriminalized the drug or authorized its medical use—the racially unjust, ineffective, and wasteful war on marijuana persists. Law enforcement agencies arrest hundreds of thousands of people for marijuana possession every year, and in every state Black people are far more likely to be arrested than white people. In some states, Black people are 8 or 9 times more likely to be arrested.

Even in jurisdictions where the sale and use of marijuana is legal, it remains criminalized under federal law. Since 1970, under the Controlled Substances Act, marijuana has been classified as a Schedule I substance, a designation reserved for drugs that have a "high potential for abuse and the potential to create severe psychological and/ or physical dependence." The consequences of criminalization have been devastating. Needless arrests, incarceration, and collateral consequences like housing and job loss, all rife with gaping racial disparities, have destabilized and further marginalized already vulnerable communities.

These consequences are magnified by the combined health and economic crises flowing from the coronavirus pandemic. Arrests and incarceration heighten the risk of spreading disease, and states struggling with massive budget shortfalls are deprived of tax revenue that regulated marijuana sales would generate.

In a national poll, we asked voters whether they support comprehensive marijuana reform that would legalize marijuana and begin to address the historic, intergenerational harms wrought by decades of racially disparate enforcement.

We specifically asked about the Marijuana Opportunity Reinvestment & Expungement (MORE) Act, legislation that would decriminalize marijuana at the federal level and redress some injustices of marijuana prohibition through, among other reforms, expungement of previous convictions and establishing grant programs to benefit communities disproportionately harmed by the war on drugs.

We found strong bipartisan support for these reforms and, in particular, the MORE Act:

▶ **58% of likely voters, including 54% of Republicans**, think that the federal government should **legalize the use and sale of marijuana**;

▶ **69% of likely voters, including 67% of Republican** voters, believe the federal government should **respect the rights of individual states** that have already legalized marijuana sales and not pursue legal action against them;

▶ **63% of likely voters, including 59% of Republicans,** believe that some tax funds from the sale of marijuana should go to **community reinvestment funds** to support the communities most harmed by punitive drug policy;

▶ **65% of likely voters, including 67% of Republicans**, agree that **marijuana tax dollars provide valuable revenue for states**;

▶ Even in states where marijuana remains illegal, **60% of likely voters, including 58% of Republicans**, believe that police should **stop arresting people for the possession of**

marijuana intended for personal use; **while 55% overall, and 50% of Republicans**, believe police should **stop arresting people for the sale of small quantities of marijuana**;

▶ **62% of likely voters, including 60% of Republicans, support the MORE Act** when asked about its specific provisions.

In this moment of national reckoning over our history of racially biased policing, and as millions of Americans from every corner of the country demand policy changes to protect Black lives and promote racial justice, passing the MORE Act—which both eliminates a tool of racially disparate policing enforcement and directs resources to repair harmed communities—is one essential step.

BACKGROUND

In 1970, President Richard Nixon signed the Controlled Substances Act (CSA) and classified marijuana under Schedule I, a designation reserved for drugs considered to be highly-addictive and that have no accepted medical use.
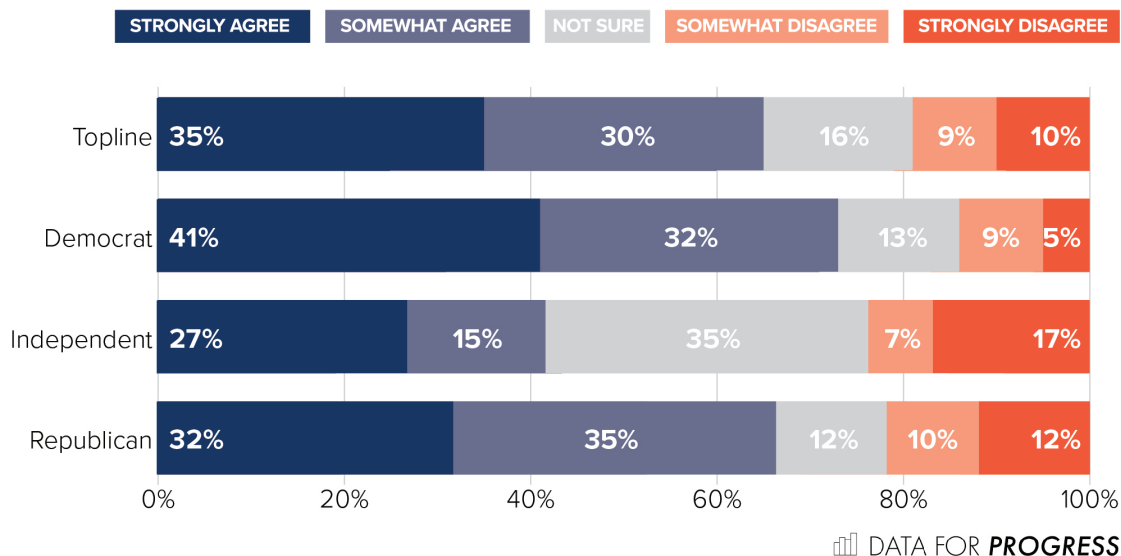
But the decision to classify marijuana alongside heroin and PCP (fentanyl and cocaine, for comparison, are classified under Schedule II) was fundamentally at odds with the drug's scientific and addictive properties. John Ehrlichman, then Nixon's counsel and assistant for domestic affairs, later explained how the classification was instead about criminalizing entire communities, a means of social control and surveillance that would enable the police to target Black people for enforcement: "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and [B]lack people," he told a reporter in 1994. "We knew we couldn't make it illegal to be either against the war or [B]lack, but by getting the public to associate

the hippies with marijuana and [B]lacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."

In the decades since, the War on Drugs—and the war on marijuana in particular—has been a long and costly campaign of injustice waged by Democrats and Republicans alike. It has inflicted misery upon millions of Black Americans whose lives have been destroyed by selective enforcement. The devastation came not just from arrests, jail time, and lengthy prison sentences (some people have been sentenced to life without parole for marijuana offenses), but also sweeping collateral consequences: the loss of voting rights, housing, employment, and federal benefits; separation from families and communities; and lost custody of children. Marijuana enforcement does not promote public safety, but it does enforce and exacerbate systemic racism within the nation's criminal legal system.

These policies have especially deadly consequences amid the ongoing pandemic and economic crisis. Arresting and incarcerating people risks spreading the coronavirus behind bars and throughout the broader community. At the same time, with state economies in freefall and critical programs at risk, the fiscal benefits of legalization—and increased tax revenue—can help revitalize depleted revenue streams. New Mexico Governor Michelle Lujan Grisham, for example, blamed recent state spending cuts on the legislature's failure to legalize and regulate marijuana last year, a move that could have generated an estimated $100 million in tax revenue.
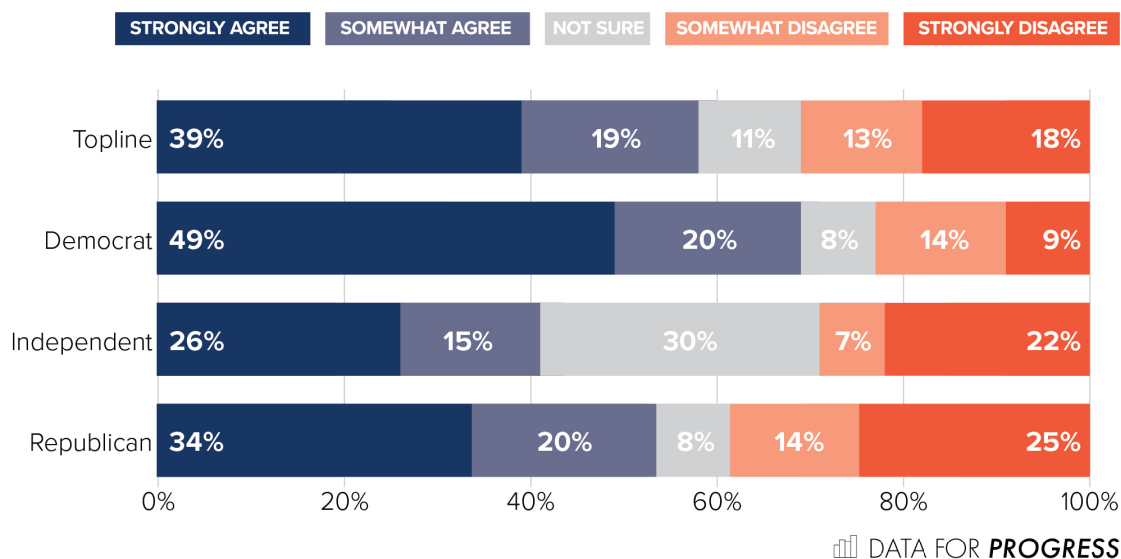
Do you agree or disagree that marijuana tax dollars provide valuable revenue for states?

	STRONGLY AGREE	SOMEWHAT AGREE	NOT SURE	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Topline	35%	30%	16%	9%	10%
Democrat	41%	32%	13%	9%	5%
Independent	27%	15%	35%	7%	17%
Republican	32%	35%	12%	10%	12%

DATA FOR **PROGRESS**

Voters across the political spectrum have long supported marijuana legalization. Our polling shows this trend has continued: we found that 58% of likely voters, including 54% of Republicans, think that the federal government should legalize the use and sale of marijuana.

Do you agree or disagree that the federal government should legalize the use and sale of marijuana for adults?

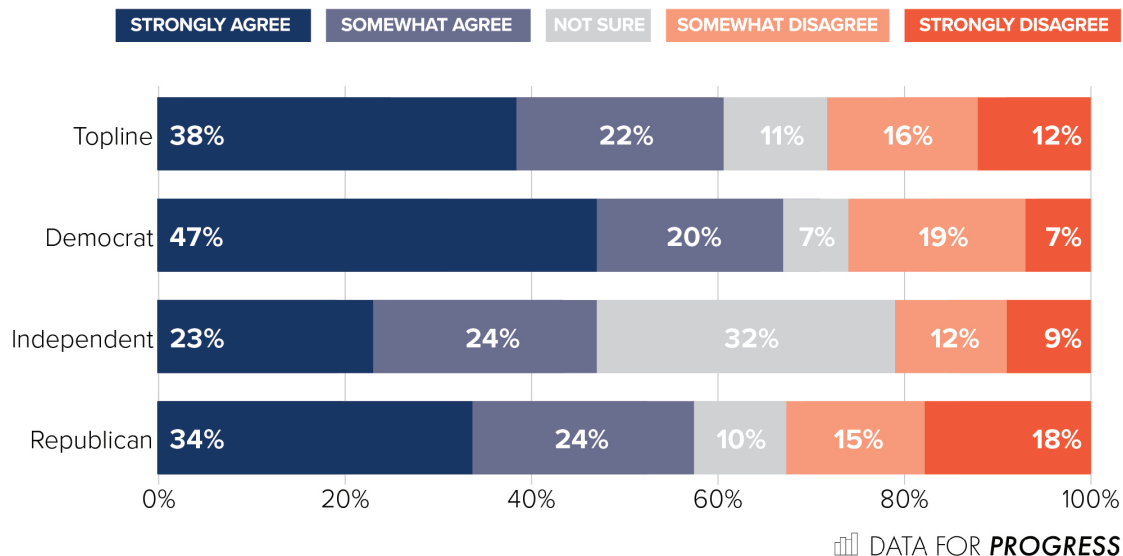|	STRONGLY AGREE	SOMEWHAT AGREE	NOT SURE	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Topline	39%	19%	11%	13%	18%
Democrat	49%	20%	8%	14%	9%
Independent	26%	15%	30%	7%	22%
Republican	34%	20%	8%	14%	25%

DATA FOR **PROGRESS**
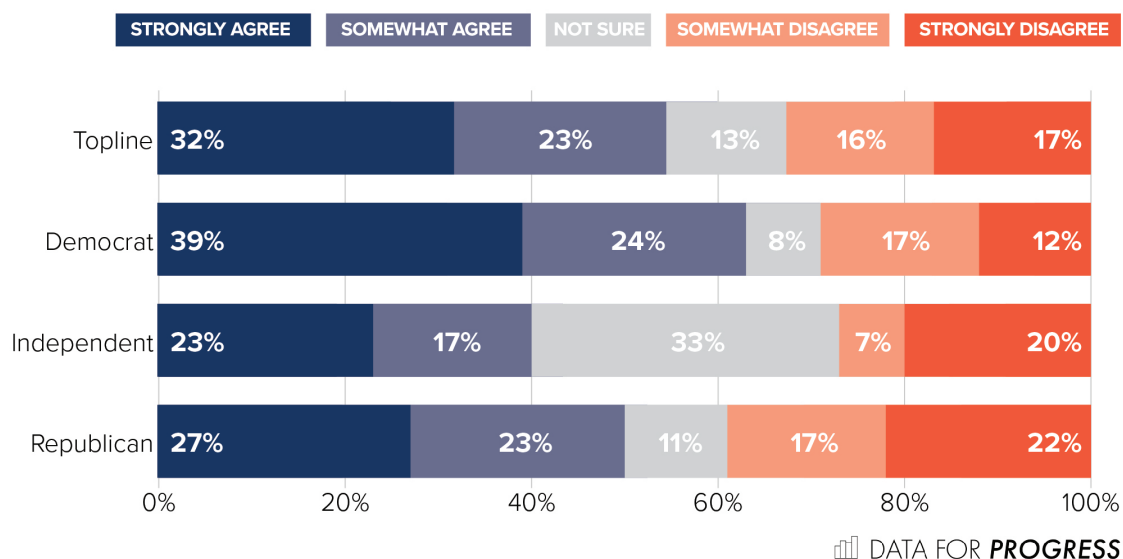
MOMENTUM TOWARD REFORM

Today 11 states and Washington, D.C. have legalized the recreational use of marijuana, 16 other states have decriminalized marijuana use (Virginia became the 16th in May), and 11 states have legalized medical marijuana use. Elsewhere, enforcement has dropped amid the pandemic, with prosecutors dismissing charges and police opting for citations over arrests to limit coronavirus exposure—a policy change that underscores how unnecessary harsh criminal enforcement was in the first place.

Indeed, curtailing arrests for marijuana, even where the drug remains illegal, is a popular approach: 60% of likely voters overall and 58% of Republicans believe that police should stop arresting people for the possession of marijuana intended for personal use; and 55% of likely voters, including 50% of Republicans, think police should stop arresting people for the sale of small quantities of marijuana.

Do you agree or disagree that police should stop arresting people for the possession of marijuana intended for personal use?

	STRONGLY AGREE	SOMEWHAT AGREE	NOT SURE	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Topline	38%	22%	11%	16%	12%
Democrat	47%	20%	7%	19%	7%
Independent	23%	24%	32%	12%	9%
Republican	34%	24%	10%	15%	18%

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Do you agree or disagree that police should stop arresting people for the sale of small quantities of marijuana?

	STRONGLY AGREE	SOMEWHAT AGREE	NOT SURE	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Topline	32%	23%	13%	16%	17%
Democrat	39%	24%	8%	17%	12%
Independent	23%	17%	33%	7%	20%
Republican	27%	23%	11%	17%	22%

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RACIAL JUSTICE DEMANDS MARIJUANA REFORM

Despite the public momentum for reform, racially disparate enforcement has continued at alarming rates. According to a recent ACLU report, law enforcement made more than 6.1 million marijuana arrests from 2010 to 2018. In 2018, there were almost 700,000 marijuana arrests—more than for all violent crimes combined, according to the FBI—with nearly 90% made for possession alone. On average, the ACLU found, a Black person in America is 3.64 times more likely to be arrested for marijuana possession than a white person, although they use marijuana at similar rates. In some states, Black people were up to 8 or 9 times more likely to be arrested.

As a result of these disparities, Black people and their communities are also disproportionately harmed by the collateral consequences of enforcement, though "collateral" is a misnomer when the chain reaction of a drug arrest—loss of jobs, homes, and children, being pushed further and further to the margins of society—is a feature, not bug, of the War on Drugs.

Marijuana reform is, in other words, a racial justice issue: Any movement for legalization must address the long-standing and racially disparate injustice of enforcement. Legalizing marijuana without addressing the historic harms of prohibition will not adequately address long-standing disparities.

Already, as more states legalize marijuana, corporations, wealthy entrepreneurs, politicians, and governments are increasingly reaping profits from a fledgling marijuana industry, while Black and Brown people languish in prison for merely possessing the same drug. In 1999, Congressman John Boehner, a Republican Representative from Ohio, voted to prohibit medical marijuana in Washington, D.C. In 2011, as Speaker of the House, he wrote a constituent to say that he was "unalterably opposed to the legalization of marijuana." Today, Boehner sits on the board of Acreage Holdings, a publicly-traded cannabis company based in New York, putting himself in the position to make millions of dollars.

At the same time, some states that have legalized marijuana prevent people with drug convictions from participating in the emerging marketplace, ensuring that those harmed most by prohibition and draconian enforcement are cut off from the profits and employment that legalization can bring.

Our polling shows bipartisan support for meaningful legislative marijuana reform that would legalize marijuana and begin to address the intergenerational harms wrought by racially disparate and selective enforcement. Voters support legalization—including delisting marijuana in the CSA—and they also support policies to economically empower the communities that the War on Drugs has disproportionately targeted and devastated.

PROPOSED FEDERAL REFORM & PUBLIC OPINION

Last year, Senator Kamala Harris (D-CA) and Representative Jerry Nadler (D-NY), introduced the Marijuana Opportunity Reinvestment & Expungement (MORE) Act, the most comprehensive marijuana reform legislation pending in Congress. The bill provides a reparative approach to marijuana legalization under federal law. It would remove marijuana from the list of banned substances under the CSA, allowing states to set their own policies without the specter of federal prosecution. It would also create pathways to expungement of previous convictions, provide economic benefits and protections to communities most harmed by marijuana enforcement, and prohibit discrimination based on the use or possession of marijuana.
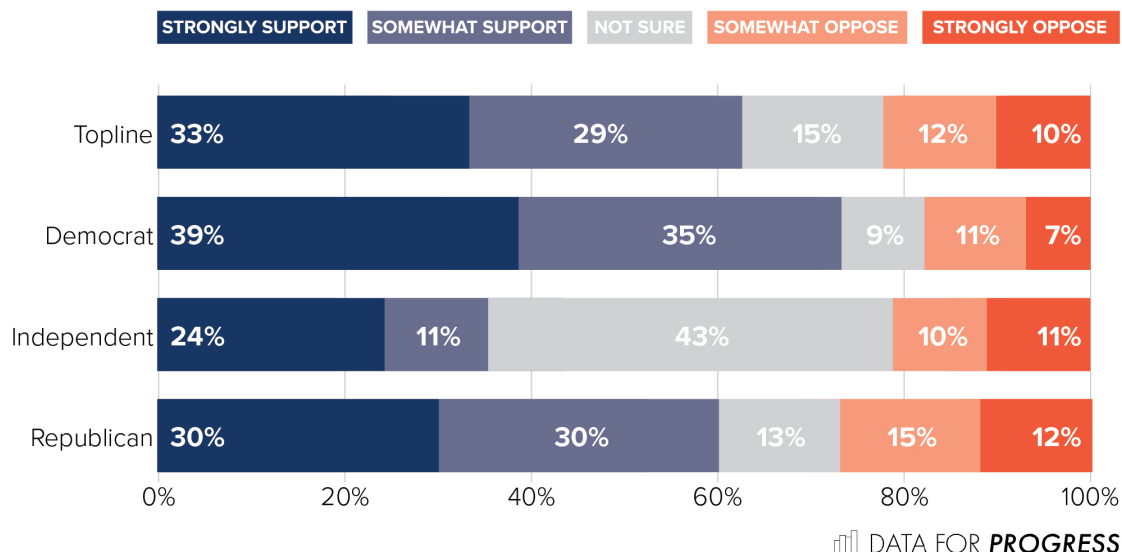
Specifically, the MORE Act would:

▶ Allow people with convictions to petition federal courts for resentencing and expungement;

▶ Prohibit the denial of any federal public benefit, including housing benefits, based on the use or possession of marijuana, or prior conviction for a marijuana offense;

▶ Provide that the use or possession of marijuana, or a prior conviction for a marijuana offense, will have no adverse impact under immigration law; and

▶ Create an Opportunity Trust Fund through a sales tax on marijuana and marijuana products. Through various grant programs, the trust fund would (1) provide services to the individuals most adversely impacted by the War on Drugs, including job training, re-entry services, legal aid, literacy programs, youth recreation, mentoring, and substance use treatment; (2) fund loans to assist small businesses in the marijuana industry that are owned and controlled by socially and economically disadvantaged individuals; and (3) fund programs that minimize barriers to marijuana licensing and employment for the individuals most adversely impacted by the War on Drugs.
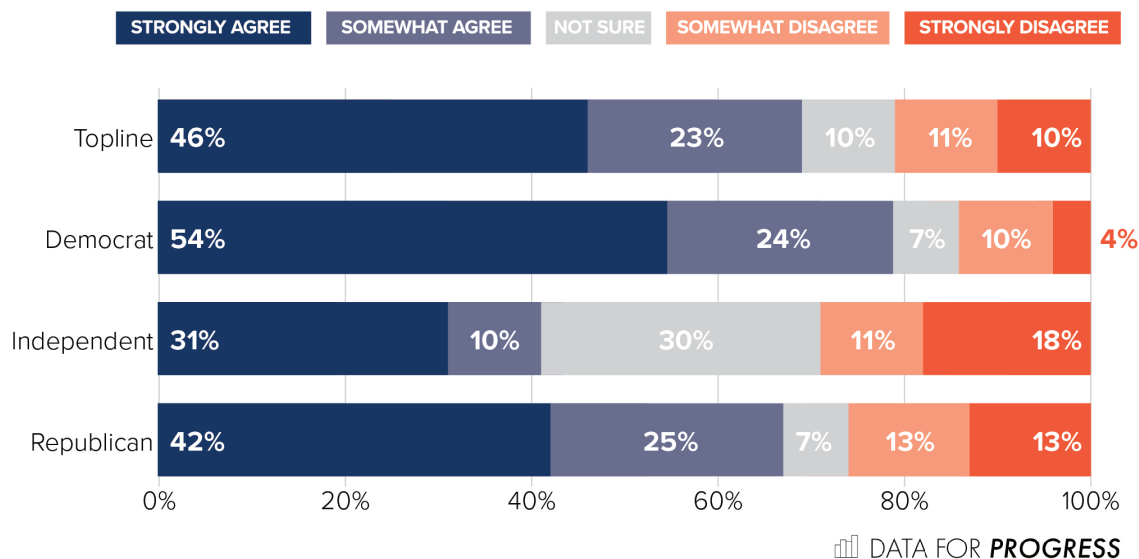
Our national poll found that voters of both parties support these policies and the MORE Act itself, with 62% of likely voters, including 60% of Republicans supporting the bill.

Do you support or oppose the passage of the MORE Act?

	STRONGLY SUPPORT	SOMEWHAT SUPPORT	NOT SURE	SOMEWHAT OPPOSE	STRONGLY OPPOSE
Topline	33%	29%	15%	12%	10%
Democrat	39%	35%	9%	11%	7%
Independent	24%	11%	43%	10%	11%
Republican	30%	30%	13%	15%	12%

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Do you agree that the federal government should respect the rights of individual states that have already legalized marijuana sales and not pursue legal action against them?

	STRONGLY AGREE	SOMEWHAT AGREE	NOT SURE	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Topline	46%	23%	10%	11%	10%
Democrat	54%	24%	7%	10%	4%
Independent	31%	10%	30%	11%	18%
Republican	42%	25%	7%	13%	13%

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Community reinvestment funds are tax revenue that the federal government and states use to invest in programs that directly benefit the communities most negatively impacted by current and former drug policy. Which of these statements is closer to your view?

■ At least some of the tax dollars from the sale of marijuana should go to community reinvestment funds.

■ All of the tax dollars from the sale of marijuana should go into the state's general fund and be treated like most other forms of tax revenue. None of it should be be set aside specifically for community reinvestment.

	Blue	Orange
Topline	63%	37%
Democrat	69%	31%
Independent	56%	44%
Republican	59%	41%

0%   20%   40%   60%   80%   100%

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POLLING METHODOLOGY

From 5/8/2020 to 5/9/2020 Data for Progress conducted a survey of 1235 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, urbanicity, race, and voting history. The survey was conducted in English. The margin of error is ± 2.7 percent.

This report is a joint project of Data for Progress, The Justice Collaborative Institute, The Law Enforcement Action Partnership, and Fair and Just Prosecution.

COVER PHOTO
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