

The effect of decriminalizing marijuana and intergovernmental relations



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Marijuana has forced its path as a controversial topic recently due to a large consensus of citizens advocating for marijuana to be legalized for both recreational use and medical purposes. These developing inclinations in respects to marijuana are fairly new and the problem herein lies in an overabundance of topics such as laws that cohere to marijuana in the dominion of federalism. States and the federal government have a responsibility to enforce laws and placate to society but this becomes a disconcerting matter in part to states and the federal government having different agendas. The incursion of intergovernmental relations certainly takes a firm role in this hotbed topic and an operational relation between all segments of government must work in partnership to meet at a common ground.

Under current federal law, marijuana is classified as a Schedule 1 drug; in the same groups as heroin, 3, 4-methylenedioxymethamphetamine (ecstasy), and LSD for example. According to the United States DEA, Schedule 1 drugs have no medical purpose and are highly addictive. This places marijuana on a higher scale than methadone, methamphetamine, hydromorphone, oxycodone, fentanyl, Dexedrine, cocaine, and Adderall for example. The DEA classification schedule is perplexing for a large portion of society who view marijuana as being "safe" and for recreational and medical use, as opposed to a drug that is more harmful than fentanyl for example. Several medical forays have proven the use of marijuana as an effective drug with medical purposes and the arrival of CBD oil for medical use is in several clinical trials with promising hope. A dilemma exists between the federal government and the state government on the use of marijuana for

medical and recreational use and this is principally noted in the definite decriminalization of marijuana in certain states and the impending legalization for recreational use of marijuana in certain cities. An examination of this propositions that the state and federal government are at odds when it comes to the enforcement of certain laws, in this case, the use of marijuana.

With federalism in mind, government at the state and federal level have enforced laws substantially different, which has pitted political agendas and the state against the federal government. " Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime..." (Ogden, 2009). The federal government partakes in a concrete view on marijuana and divergent to the state government. Certain states have placed marijuana as legal for medical use and recreational use, which shows them boldly ignoring federal law. The federal government has discretion in the persecution and implementation of these law, such as stated in *Gonzales v. Raich* . The United States Supreme Court held that the federal government has the legal power to disbar marijuana use for all content and purposes. Therefore, allowing federal officials to prosecute medical marijuana patients who wish to grow their own marijuana, this applies even if they reside in a state where medical marijuana use is protected under state law. The Supreme Court directed that Congress and the FDA should come to a consensus and alleviate this matter. (Raich, 2005). The Raich decision is influential due to it exposing a gray area stating that the laws of California are not annulled due to the presupposition that federal law supersedes state and local laws.

“ According to a post-Raich statement by California Attorney General Bill Lockyer, the ruling does not overturn California law permitting the use of medical marijuana. Lockyer also underscored the role of local law enforcement in upholding state, not federal, law. A superior court has rejected the County of San Diego’s claim in a lawsuit filed against the State that California’s medical marijuana laws are preempted by federal law. As of this printing, that case is pending on appeal.” (“ Federal Marijuana Law”, 2019). The aforementioned statement shows great applicability to constituents in states where medical marijuana is legal with medical approval from a licensed professional. For example, though marijuana is thoroughly decriminalized and legal for use in California, the federal government could still impose federal law due to marijuana classified an illegal drug under their scheduled classifications. Case law helps elucidate this subject as shown by *US v. Marin Alliance for Medical Marijuana* . The Marin Alliance for Medical Marijuana, attained a significant victory against the U. S. Department of Justice that gave citizens in California a major boost in their dispute with the federal government. In *U. S. v. Marin Alliance for Medical Marijuana* , the U. S. District Court for the Northern District of California affirmed the federal government’s permanent ruling against their distribution of marijuana in violation of the Controlled Substances Act can only be enforced against the dispensary only if an organization is in stark violation of “ State laws that authorize the use, distribution, possession, or cultivation of medical marijuana,” in this case, being the state of California. This was of supreme importance in the relations between both the state and the federal government on this hotbed issue and set a potent model that so

long as there was compliance with state law, the federal government could not interfere.

The federal government largely inputs its effort on enforcing and cracking down on large scale operations and illegal drugs dealt within the black market and transactions that deliberately violate federal laws and precedents. Marijuana dispensaries tend to reside in that gray area, in most part because of how attainable and accessible they allow marijuana to be for consumers. Dispensaries are in business to turn a profit and this is what potentially shines a light on their operations under the massive scope of the federal government. This has been demonstrated in numerous cases where the federal government employs strategies to garner compliance from local operations.

“ If the dispensary operates in rented space, a second letter often goes to the landlord. The letter warns the property owner that if it allows the dispensary to continue to violate federal law on the premises, the owner risks losing the property through forfeiture to the federal government. This is a very clever move—owners who are fearful of losing their property may terminate dispensaries’ leases...” (“ LARA - Medical Marijuana Facilities Licensing”, 2019). This allows those citizens in states where marijuana is legal that they must be conscious of following state laws and not garnering the attention of the federal government. Red flags include having unregistered dispensaries, having an excess amount of marijuana, and selling and dealing illegally.

The subject of federalism plays an instrumental role in intergovernmental relations between state and the federal governments when it comes to marijuana. As aforementioned, the legality of marijuana becomes paradoxical due to federal laws being conflicted with local and state laws. Under the Obama administration, it was inferred that an abundance of resources would not be utilized in the enforcement of marijuana laws unless certain laws were not followed. Generally, this could be curbed by a strict adherence to state laws and compliance. Deputy Attorney General David Ogden declared in a memorandum that gave a guideline to federal prosecutors in states where marijuana is legalized. "Citing a desire to make "efficient and rational use of its limited investigative and prosecutorial resources," the memorandum specified that while the "prosecution of significant traffickers of illegal drugs, including marijuana ... continues to be a core priority," federal prosecutors "should not focus federal resources on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." The memorandum made clear, however, that "this guidance [does not] preclude investigation or prosecution, even where there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests." (Babich, 2011)

With both the state and the federal government having a divergent view on marijuana due to the federalist form of government that exists in the United States, every state in the country has a different stance on marijuana. The only certainty is that all 50 states and the District of Columbia have

decriminalized marijuana in regards to recreational use. In the city of Houston, which is a blue city operating within a red state, possession of marijuana is now a Class C offense in which a peace officer can issue a written citation as opposed to a Class B misdemeanor which equates to jail time. This has made a tremendous impact in terms of jails and prisons not being overcrowded with low level crimes and a reformation of the criminal justice system. In Harris County, Texas, this decriminalization is a nationwide effort to decentralize resources and time. “ When Harris County District Attorney Kim Ogg created her misdemeanor marijuana diversion program last year, she envisioned a county-wide initiative that would save law enforcement officers and prosecutors’ time and resources. It would also help non-violent low-level marijuana users stay out of jail and keep the arrest off their record, a campaign promise Ogg made to reduce the roughly 10, 000 annual misdemeanor arrests in Harris County.” (Rogers, 2019). This initiative is instrumental in clearing up resources at the public sector level by clearing up resources that would have been allocated to housing misdemeanor criminals and instead spreading these resources and funds in a horizontal manner. Law enforcement is but one of the stakeholders involved in marijuana but a vital one due to the gray area in which legalization resides in. Different cities and counties still enforce “ possession of marijuana” as a Class B misdemeanor but a shift is certainly inevitable.

This topic is key in terms of bridging vital stakeholders together in an effort to cooperatively gain a general consensus on moving forward with the legalization of marijuana.

With a multisector approach necessary in order to bridge the gaps that have resulted as far as the repercussions and effects of legalization, cooperation and collaboration at the intergovernmental level are a necessity. Legalization has brought forward a surplus of questions pertaining to what exactly is legal or not. Legalization has stressed an extensive set of issues resulting from the numerous means of marijuana use, such as “dabs”, concentrates, vapes and edibles. The absence of a definite regulatory structure, and the impediments of differing state and federal marijuana laws add to this dilemma and has compelled different agencies to work together in order to respect the intentions of the voters and to mitigate any negative outcomes.

For instance, in Colorado, the public health sector has worked diligently to demonstrate the health effects of legal marijuana as well as working with different stakeholders to keep the public informed on the policy and enforcement aspect via education and relations. What occurred was a hike in taxes from the sales of recreational marijuana in Colorado as well as a joint collaborative effort highlighting the potential dangers of second hand smoke and implementing smoke free zones. Colorado began treating marijuana as it did tobacco and added it to the Clean Indoor Air Act to prevent exposure to secondhand smoke from both tobacco and marijuana in public places.

Lawmakers also passed several bills that enforced the selling of marijuana to anyone under the age of 21 as a felony offense, as well as requiring a valid ID to purchase marijuana. “ Additionally, with stakeholder and community input, Colorado established rules on packaging, labeling, and product safety requirements equal to or exceeding those of tobacco products for recreational marijuana products. Packaging cannot appeal to children or

youths younger than 21 years or use cartoon characters. Strict requirements have been placed on advertising, including outright bans on Internet pop-up advertisements and any type of advertisement that targets minors.” (Ghosh et al., 2016).

Education on the legalization of marijuana for recreational and medical use is vital in state government’s efforts to teach the safe, legal and responsible use of marijuana in states where permissible. This is used to educate the public about the health effects of marijuana and key laws that prevent youth marijuana initiation. Supplementary messaging supports the proper safekeeping of marijuana and educates on the dangers of underage marijuana use, as well as the dangers of marijuana use in pregnant consumers. The delivery of these messages is broadcasted over the radio, internet and journals and publications paid for by key stakeholders. Different target audiences are identified and given a deliberate message that pertains to their arena in an effort to establish policies and best practices to prevent adverse health effects and to disseminate this information throughout the marijuana industry. In Colorado, a task force was generated that tied different agencies and stakeholders together that could best establish and set precedents for the varying policies and initiatives. “ As federal resources are limited, the department has taken the lead role in convening a multidisciplinary task force on occupational health to assess the physical and chemical hazards and potential health effects associated with this industry. This task force consists of industrial hygienists, safety professionals, and occupational medicine physicians as well as marijuana industry representatives.” (Ghosh et al., 2016). With a concerned task in place that

can best induce a sense of control over the potential risks and harm of marijuana smoke similar to tobacco and alcohol, it ensues transparency that best serves to familiarize the public with the legalization of marijuana.

Policy and oversight can pose a challenge to medical and recreational marijuana due to the rigorous litigation and governance that precludes its legalization. Being that it is legal in certain states and illegal in others, it dictates that state legislatures and the federal government can compromise on certain issues. A capitol issue is the varying range of regulations that coincide between recreational marijuana and medicinal marijuana. Pertaining to recreational marijuana, it is difficult to get federal funding for research and development due to the openness of legalization and a lack of concrete enforcement on how to sell and marijuana and the amount that can be grown under strict supervision. Medicinal marijuana on the other hand has concrete mandates in place that facilitate the policies regarding selling, buying and the total legality. For instance, in states where recreational marijuana is illegal but medicinal marijuana is, citizens may legally grow their own marijuana provided they have a license and the strand of marijuana have a stronger potency of THC as well. This parlays into certain states not willing to fully legalize marijuana by going the recreational route. By maintaining it as a drug requiring a doctor approved prescription for medical issues such as seizures, epilepsy, weight gain in patients with cancer and AIDS, Chron's Disease, glaucoma and other issues that have shown by some research to be alleviated by marijuana. (Cold, Health & Disease, 2019) This is a major reason that the majority of states where only medicinal marijuana is allowed, we will continue to see a reluctant approach to

recreational marijuana due to stout medicinal marijuana advocacy groups and a blurring of legality regarding recreational and medicinal boundaries. Policy development is also hindered by the exclusive work of federal, state, and local laws on marijuana. “ Research to assess both the beneficial and the adverse health effects of marijuana is often difficult to conduct because of marijuana’s Schedule I drug designation applied by the US Drug Enforcement Agency. Public universities are reluctant to participate in marijuana-related research owing to concerns about federal funding and their ability to comply with the Drug Free Schools and Communities Act. Organizations providing prevention programming may be restricted from accepting marijuana tax funds because of ambiguity in federal funding requirements for other activities. Furthermore, some local governments in Colorado have chosen to restrict marijuana sales, possession, and use in their jurisdictions.” (Ghosh et al., 2016).

Furthermore, with the initiation of legalization, regulating the product to certain standards are a priority in order to provide an exceptional product. Various levels of government must work together to strive that the marijuana being sold both for medical reasons and recreational reasons passes mandatory inspections and abides to a general set of guidelines. The FDA does not have a say when it comes to overseeing the regulation of marijuana therefore state and local authorities must formulate a level of oversight that can preclude any form of loose and unstable regulation. Regulation means overseeing the cultivation, growing, safekeeping, all the way to the packaging and commercialization. “ With regard to marijuana, the major public health goals of enforcement are to ensure a product free of

contaminants that is packaged in child-resistant packaging and properly labeled. To streamline the regulation of the marijuana industry, typical public health enforcement functions such as product and food safety have been incorporated into the overall inspection and enforcement strategy.” (Cheng, Mayer & Mayer, 2018). This takes a great deal of fiscal resources that must be allocated for this to happen and intergovernmental relations at work that can alleviate clogging in varying levels of government. Dilemmas with this issue is that no standard has been set in stone at any level and an abundant lack of proficiency testing and reference laboratories.

With the various factors and legal ramifications that must occur in order to get a state on board to legalize marijuana either for recreational or medicinal purposes, the question of a state shifting towards legalization still treads waters on conflicting intergovernmental relations between the state and the federal government. The Controlled Substance Act technically imparts that marijuana is illegal and an individual can be charged and prosecuted. Congress has had case laws that have set a precedent regarding this manner such as *Gonzales v. Raich* and , *US v. Marin Alliance for Medical Marijuana*. Although Raich established Congress’s constitutional authority to ratify the existing federal prohibition on marijuana, ideologies of federalism prevent the federal government from directing that the states support or participate in imposing the federal law. “ While state resources may be helpful in combating the illegal use of marijuana, Congress’s ability to compel the states to enact similar criminal prohibitions, to repeal medical marijuana exemptions, or to direct state police officers to enforce the federal law remains limited. The Tenth Amendment likely prevents such an intrusion into

state sovereignty.” (Federal Marijuana Law”, 2019). The Tenth Amendment provides that the “ powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. The Tenth Amendment plays a significant role in the States maintaining control over certain laws, in this case marijuana.

What has been occurring is a nationwide epidemic of acceptance of marijuana, with an approval rate of over 62% in 2018, which is a substantial rise from a poll in 2000 that depicted only 31% were in favor of legalization. (Hartig and Geiger, 2018). This had led to wave of decriminalization which has imparted criminal justice reform, brought forth revenue and changed the concept of marijuana as being labeled a “ dangerous” drug for newer generations. The United States is an evolving entity that requires collaboration amongst all levels of government to cultivate a potent level of governance. Decriminalization is a major step in certain states that had rigorous drug enforcement laws for decades until the advent of medical research along with a generation that views marijuana as less dangerous than alcohol for instance.

It is entirely possible that the entire country will one day elect to legalize marijuana but until then, state sovereignty and federalism will emit their role on this subject.

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