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## Reconciling American Marijuana Policy in a Federal System

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## **Reconciling American Marijuana Policy in a Federal System**

Catherine Morton

### **Abstract**

The recent successful ballot initiatives in Colorado and Washington to legalize recreational marijuana despite restrictive federal law continue to demonstrate the disconnect between national and state marijuana policy. In order to understand how many of these national policies were enacted, an investigation will be presented of the discriminatory history of marijuana legislation, indicating the inconsistent nature of past regulation. Thus following will be an examination of relevant Supreme Court cases depicting the Supreme Court's ultimate hesitation to prevent the states from circumventing federal marijuana law. Finally, a discussion will be held on the ramifications of inconsistent state and national policies, which create a system that is at odds with the principles of the Constitution. In the face of growing public support for medical marijuana and increased state action towards allowing more access to the drug for medical and even recreational purposes, the federal government should reexamine its policies in order to maintain a healthy democracy.

### **Introduction:**

When reciting the Pledge of Allegiance, school children all across the United States declare each day that America is a nation with "liberty and justice for all" ("The Pledge," n.d.). Yet, in practical matters, one is forced to ask what this liberty truly means. What legal limitations have been created to restrict the power of the individual to choose to live his or her life in the way he or she sees most fit? Throughout its history as a nation, America has seen the creation of regulations that have culled individual freedom and prevented personal choice. However, the creation of such policies may not always be rooted in a legitimate basis. Examining the history of the criminalization of marijuana will illustrate how and why the federal and state governments have taken measures to restrict usage of the drug. An in-depth analysis of America's marijuana policies reveals a history of discrimination that has been the basis for much of the nation's legislative action. Following this inquiry will be an examination of court cases

contemporaneous with the period in which marijuana has been considered illegal, indicating the Supreme Court's hesitation to prevent the states from circumventing federal marijuana law. Finally, a discussion will be held on the ramifications for states' rights that have resulted from inconsistent federal and state marijuana policies.

Ultimately, the paper will call upon the federal government to reconsider its marijuana policies in view of actions taken by the states and appeal to the American people to continue the great legacy of democracy by pursuing the goals in which they believe.

### **A History of Minority Oppression:**

Examining the history of the prohibition of marijuana reveals a background tinged with bias and inconsistencies, indicating sharp prejudice against powerless minorities. As President Lyndon Johnson's Commission on Crime noted, drug abuse policy "often tends to discriminate against the poor and subcultural groups in the population" (Moran, 2011, p. 561). Such prejudice plays a large role in uncovering why the drug became illegal and is a strong argument for the amending of these laws.

In its early history, marijuana was seen as a useful rather than harmful plant. Early colonists used hemp for sails, riggings, and caulking, and the plant was grown by George Washington, Ben Franklin, and Thomas Jefferson (Gerber, 2004, p. 2). Rather than growing it for consumption, pre-industrial Americans tended to use it for its fiber, but with the rise of the cotton industry, hemp began to be largely ignored in America (Bonnie & Whitebread, 1974, p. 2). It was not until the mid-nineteenth century that Americans began to use it for medical purposes, and between 1840 and 1900, over one hundred medical journal articles were published that recommended cannabis use (Bonnie & Whitebread 1974, p. 4).

As time went on, this more neutral view of marijuana began to change with growing immigration into America and increasing awareness of marijuana's potential use as an intoxicant. Following the Mexican Revolution of 1910, Mexican immigrants flooded the Southwest resulting in prejudice against the incoming immigrants and their marijuana habits (Gerber, 2004, p. 3). Officials in states especially affected by these migrating individuals such as Texas and California accused marijuana of inciting a "lust for blood" in Mexican immigrants and arousing them to violent crime (Gerber, 2004, p. 3). Other minorities were additionally targeted in the prejudice against marijuana. In the deep South, New Orleans newspapers and prosecutors associated the drug with African-Americans, jazz musicians, prostitutes, and the underworld, all of whom were members of society that were not generally given the opportunity to stand up for and defend themselves (Gerber, 2004, p. 3). During this time, the United States was obsessed with violent crime which was in large part induced by the prohibition of alcohol. Since the white majority tended to associate minority groups with criminal activity, they presumed that marijuana was addictive, dangerous, and a representation of evil (Moran, 2011, p. 561). Newspapers began to report on the evils of marijuana resulting in the passage of laws in Louisiana and Colorado that banned the possession and sale of marijuana (Moran, 2011, p. 561). This trend continued, as from 1914 to 1933, marijuana usage for nonmedical purposes was criminalized in twenty-three states (Moran, 2011, p. 561). Yet, these statutes did not arise from any proven ills or social issues derived from the drug. Rather, the prejudice shown towards these immigrants indicates that this earlier dislike for marijuana was not based upon any mental or physical effects it induced but was derived from dislike for the people who used it:

minority groups (Moran, 2011, p. 562). Lawmakers were thereby able to classify it as a narcotic, a claim that frustrated doctors and the pharmaceutical drug industry, the latter of which declared that, “cannabis was an insignificant medicine which had no place in antinarcotics legislation” (Moran, 2011, p. 563). However, such protests were ineffective in preventing discriminatory legislation, and the laws continued to stand.

The second round of marijuana demonization occurred during the Great Depression. Reacting to poor economic conditions, Southwestern states began to support a federal marijuana prohibition as a way to deport “‘job-stealing’ Mexican migrant workers” (Moran, 2011, p. 563). In 1935, the leader of the American Coalition of Patriotic Societies wrote, “Marijuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration” (Moran, 2011, p. 563). However, true legislation did not occur until a federal agency became concerned with the issue. Harry Anslinger, the commissioner of the Federal Bureau of Narcotics, became involved with marijuana when Congress decreased the Bureau’s budget (Moran, 2011, p. 564). Anslinger responded by pushing for federal marijuana legislation and, in the process, worked to connect the demonized drug with minorities (Moran, 2011, p. 564). He declared to Congress that half of America’s crime derived from Mexicans, Latin Americans, Filipinos, African Americans, and Greeks whose bad behavior stemmed from marijuana usage, and his racist comments crept their way into newspaper headlines, further alienating minority populations of the United States (Moran, 2011, pp. 564-565). In response to the New York Academy of Medicine, which issued a report noting that marijuana usage did not result in violent behavior or addiction, Anslinger declared the researchers “dangerous and strange” (Gerber, 2004,

p. 4). When Congress decided to enact marijuana legislation, they called in Anslinger to testify at committee hearings. In these hearings, Anslinger relied on both newspaper articles as well as hearsay accounts in order to tell of heinous crimes that were claimed to be the result of marijuana usage (Moran, 2011, p. 565). Dr. William C. Woodward, the legislative counsel to the American Medical Association, testified in opposition and, in response to the use of newspaper accounts, asked for a neutral scientific body to examine the drug, but Congress dismissed his request (Moran, 2011, p. 565). As a result, the federal Marihuana Tax Act of 1937 was instituted, which did not criminalize marijuana, but did create outrageously expensive financial sanctions (Moran, 2011, p. 561). The inconsistencies between this Act's intent and its operation would create problems in the future that would arise in the Supreme Court case *Leary v. United States*, discussed in the following section.

As time went on, despite the best efforts of the Marihuana Tax Act, marijuana usage began to expand beyond minority use. In the 1960s, marijuana became a popular drug for America's white youth, creating the necessity for a new framework in which to analyze the drug. Now, marijuana was associated with the "cultural rebel," and politicians began to denote marijuana as a demolisher of American values, allowing them to portray themselves as strong leaders who were upholding a strong sense of morality and rightness (Moran, 2011, pp. 566-567). This new framework of associating marijuana with "mellowness, introspection, and an overbearing appetite in white users" contrasted with earlier times when marijuana was blamed for causing violence and terror in ethnic minorities (Moran, 2011, p. 568). However, this inconsistency seemed to

be overlooked on the national stage. Rather, it helped set the stage for the ascendancy of Richard Nixon who would usher in a new era of drug legislation.

President Richard Nixon entered office in the 1970s to a nation facing increasing drug use especially among college students (Moran, 2011, p. 567). Shortly after assuming the presidency, he declared a national “war on drugs,” and in response, Congress worked to enact legislation that would amalgamate all the various drug laws into a comprehensive code, regulate sources that were legitimate providers of drugs, and strengthen the power of law enforcement against illegal drug traffic (“Gonzales,” 2005). The result of this work was the Controlled Substances Act in 1970, which created five “schedules” of drugs and classified marijuana as a Schedule I controlled substance (Boyd, 2004, p. 1269). Marijuana’s classification as a Schedule I controlled substance indicated that it “[had] no currently accepted medical use in treatment in the United States,” and made it illegal to either knowingly or intentionally “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance” unless the Act provided for it (Boyd, 2004, pp. 1269-1270). Marijuana’s reputation had ultimately evolved. No longer associated with the violence that had previously been associated with minority usage of the drug, the Federal Bureau of Narcotics now associated marijuana with sloth (Moran, 2011, p. 569).

Not all presidents held such a strict stance concerning the drug. President Carter recognized the downfalls of harsh legislation and declared to Congress, “Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself . . . Nowhere is this more clear than in the laws against possession of marijuana in private for personal use” (Moran, 2011, p. 569). However, such presidential

leniency did not last for long. The presidency of Ronald Reagan ushered in a new era of strict drug laws. Reagan began strict sentencing requirements for drug offenses and also introduced sanctions for drug users, a move that contributed to the increase of drug-related offenders in federal penitentiaries from sixteen percent to sixty-two percent between 1970 and 1994 (Moran, 2011, p. 570).

Currently, the effectiveness of marijuana enforcement is questionable, and imbalanced enforcement has continued to result in unequal treatment towards minorities. Marijuana is presently America's third-most popular drug, following alcohol and tobacco (Moran, 2011, p. 571). Its prohibition has led to the increasing power of criminal drug dealers who find the illegal drug trade quite profitable (Moran, 2011, p. 573). Criminalization has additionally led to oppression of minorities who are often the ones persecuted under the law. Even though marijuana usage rates between whites and blacks are almost equal, blacks are arrested almost three times as often as whites are for marijuana possession offenses (Moran, 2011, p. 574).

In response, America has seen increasing liberalization of its marijuana policies on the state level. Eighteen states and Washington D.C. have changed their laws in order to legalize medical marijuana for those facing debilitating medical conditions (Cohen, 2012). In the November 2012 election, voters from Washington and Colorado approved state ballot initiatives that legalized possession of small amounts of marijuana (Wyatt, 2012). Though marijuana possession still remains illegal under federal law, these moves have demonstrated a state-driven initiative to combat harmful procedures. If this trend continues, hopefully these policies will seek to ameliorate the harm done towards minorities throughout the racially tinged history of marijuana prohibition.



### **The Role of the Supreme Court:**

With marijuana's inconsistent regulatory history, it is no wonder that some have questioned whether the government's actions have challenged constitutional rights. The Supreme Court has been called upon several times to arbitrate decisions based on various federal laws concerning marijuana. Cases involving marijuana have hinged upon important constitutional issues such as the right against self-incrimination, the right to due process, the supremacy of federal law, and appropriate usage of the Commerce Clause. In particular, the cases *Leary v. United States*, *United States v. Oakland Cannabis Buyer's Cooperative*, and *Gonzales v. Raich* illustrate three individuals who were willing to take their battles against the federal government all the way to the Supreme Court. In choosing to arbitrate these cases, the Supreme Court has heeded its call to loyalty to the Constitution, while allowing individuals who believe their rights have been abridged to have their say. However, at the same time, it must be acknowledged that the Supreme Court has chosen not to rule specifically on the constitutionality of state legislation upholding medical marijuana, in particular, California's controversial Compassionate Use Act. This reluctance to confront the Compassionate Use Act has allowed the law to stand even while individuals have been prosecuted for violating federal law.

The Supreme Court case, *Leary v. United States*, was argued in 1968 and involved the individual's protection against self-incrimination and right to due process. Plaintiff Timothy Leary was indicted when a customs officer in Texas caught him with marijuana after he, two others, and his children were denied entry into Mexico ("Leary v.," 1969). Leary acknowledged that he had obtained the marijuana in New York, and he

was prosecuted under the Marihuana Tax Act (“Leary v.,” 1969). This Act was divided into two main sub-parts: the first part dealt with an occupational tax that was levied on people who had legitimate pursuits in the area of marijuana transportation while the second part imposed a tax on all transferees of marijuana, making it illegal to transfer marijuana without having a written order form that was issued by the Secretary of the Treasury (“Leary and Covington,” 1969-1970, 90). Leary claimed that his conviction under the Marihuana Tax Act violated his privilege against self-incrimination, which is protected under the Fifth Amendment (“Leary v.,” 1969). To obtain the order form, he would need to identify himself as a transferee of marijuana who had not registered and paid the occupational tax (“Leary v.,” 1969). Because current state law prohibited marijuana, Leary was afraid that by declaring on the order form that he was a recent and unregistered transferee of marijuana, he would be helping to establish his guilt that he was breaking state law (“Leary and Covington,” 1969-1970, p. 91). He additionally argued that his conviction also violated his Fifth Amendment right to due process. A section of the Pure Food and Drug Regulations imposed criminal punishment on those who violated the law by illegally bringing marijuana into the United States or those who knowingly facilitated the transfer, concealment, or sale of marijuana that had been brought into the country in a way that violated the law (“Leary v.,” 1969). A later section declared that when a defendant is on trial for violating the statute, the possession of marijuana is sufficient evidence to allow conviction unless the defendant is able to explain his possession in a way that satisfies the jury (“Leary v.,” 1969). Leary believed that this section violated his right to due process because it presumed that he knew of the marijuana’s illegal importation and placed the burden of proof on him to prove

otherwise (“Leary v.,” 1969). In response to the first accusation, the United States government argued that the registration requirement was not aimed at people who were breaking the law but at the legitimate market, because the Treasury Department had in the past always denied order forms from people who were unregistered (“Leary and Covington,” 1969-1970, p. 91). As a result, only those who had legitimate business in transporting marijuana would have to submit the order form, and there would be no risk in self-incrimination because they would be engaging in legal activity.

As the case made its way through the lower courts, these courts, with one exception, tended to agree with the government that the registration provision was constitutional, but the Supreme Court saw otherwise (“Leary and Covington,” 1969-1970, p. 88). During testimony, the Assistant General Counsel of the Department of the Treasury declared that the bill would allow anyone to acquire marijuana as long as they paid a tax of \$100 an ounce and made the purchase on the order form (“Leary and Covington,” 1969-1970, p. 92). This testimony served to discredit the government’s view that the Act was exclusionary to those who were acting illegally. Instead, it illustrated a law that would permit illegal activity as long as the transgressor was able to pay. As a consequence, the Supreme Court concluded that the government’s interpretation was “contrary to the manifest congressional intent that transfers to nonregistrants be taxed, not forbidden” and that the scheme “compelled [the] petitioner to expose himself to a ‘real and appreciable’ risk of self-incrimination” (“Leary v.,” 1969). The Court additionally held that the petitioner’s right to due process was violated. Even though most of the marijuana used in America was of foreign origin, the Court did not believe that the majority of marijuana users knew where their marijuana had originated (Abbitt, 1970, p.

380). It thus reversed the judgment of the Court of Appeals which had found Leary guilty (“Leary v.,” 1969).

However, the Supreme Court’s decision did not necessarily lead to immediate results. A *Houston Law Review* article from January 1970 found that, despite being declared unconstitutional, the Marihuana Tax Act was still being used (Abbitt, 1970, p. 382). Because the Marihuana Tax Act provided a shorter penalty than the smuggling and illegal import statutes, defendants were allowed to plead guilty under the Marihuana Tax Act, waive their Fifth Amendment rights, and receive the shorter sentence (Abbitt, 1970, p. 382). Such flouting of the Supreme Court’s decision occurred until the passing of the Drug Control Act in 1970, which included a section which repealed the Marihuana Tax Act altogether (“558 F.2d 270,” n.d.). The government’s choice to temporarily ignore the Supreme Court’s decision was an unfortunate transgression of separation of powers. At the same time, the case illustrates the defendant Timothy Leary’s commitment to ensuring that his constitutional rights were being protected. Even in the face of powerful federal law, he fought his way through the courts, ultimately leading to the overturning of his conviction.

The next influential Supreme Court case involving federal marijuana legislation was *United States v. Oakland Cannabis Buyer’s Cooperative*, which forced the Supreme Court to decide upon the status of medical marijuana in accordance with the Controlled Substances Act (Boyd, 2004, p. 1270). In 1996, California passed the Compassionate Use Act which created a statutory exception to the California laws which forbade the possession and cultivation of marijuana and allowed patients to be eligible for use of the drug for medical purposes when their primary care physician

issued a recommendation or approval (Blaine, 2002, p. 1197). Following passage of the Act, a number of organizations created “medical cannabis dispensaries” which would dispense marijuana to patients (Boyd, 2004, p. 1270). In response, the federal government sued the Oakland Cannabis Buyer’s Cooperative in the United States District Court in 1998, declaring that their actions violated the Federal Controlled Substances Act (Soriano, 2002, p. 257). At first, the District Court granted a preliminary injunction against the co-op, but after the co-op continued to distribute medical marijuana, the District Court found them in contempt and rejected their defense that the distributions were medically necessary (Soriano, 2002, p. 258). The co-op appealed the case to the Ninth Circuit Court of Appeals, asserting a defense of medical necessity, and the court amended the injunction to include a “medical necessity exception” (Soriano, 2002, p. 258). However, the Supreme Court found against the co-op in 2001, declaring that they could not use the medical necessity defense because the language of the Controlled Substances Act declares that marijuana has no medical value whatsoever (Boyd, 2004, p. 1271). The Supreme Court decided in this case that the co-op could not use a defense that was invalid under current federal law. If the federal government declares that marijuana has no medical value, then the co-op cannot say that they must deliver it for medical reasons. This case is significant in that the Court chose not to decide upon the constitutionality of California’s act but instead only dealt with the injunction. As a result, the Compassionate Use Act was allowed to endure, continuing a situation in which federal and state law remained incompatible.

This incompatibility resulted in a second Supreme Court case dealing with the ramifications from California’s Compassion Use Act. *Gonzales v. Raich* involved Angel

Raich who was a California resident who used doctor-recommended marijuana as a treatment for a serious medical condition (“Gonzales,” 2005). She brought suit after federal Drug Enforcement Administration agents destroyed her six cannabis plants, asking for injunctive and declaratory relief that would prohibit enforcement of the federal Controlled Substances Act from preventing individuals from possessing, obtaining, or manufacturing marijuana for personal medical usage (“Gonzales,” 2005). The District Court denied the injunction, but the Ninth Circuit Court of Appeals reversed this decision because they held that the CSA was an unconstitutional usage of the Commerce Clause, using the precedent of *United States v. Lopez* and *United States v. Morrison* (“Gonzales,” 2005). They declared that these cases were similar in that they held that “this separate class of purely local activities was beyond the reach of federal power” (“Gonzales,” 2005). Because the Commerce Clause only gives the United States Congress the power “to regulate Commerce with foreign Nations, among the several States, and with the Indian Tribes,” the court did not believe that congressional power should extend to local activity within the state (“The Constitution,” n.d.). The Supreme Court thus examined the issue of whether the commerce power included the power to forbid local cultivation and usage of marijuana when such activities were in compliance with California law (“Gonzales,” 2005). It ruled in favor of Alberto Gonzales, Attorney General of the United States, finding that the Act was a legitimate and constitutional exercise of federal power (“Gonzales,” 2005). Because Congress can regulate activities that substantially affect interstate commerce, it can regulate local marijuana activities because high drug demand can result in homegrown marijuana entering the illicit market, frustrating Congress’ intent of abolishing the illicit commercial drug trade

(Nicholson, 2006, p. 338). The Court used *Wickard v. Filburn* as precedent, a case in which the Supreme Court held that a commercial farmer could be fined for harvesting wheat above the limits of the Agricultural Adjustment Act of 1938, because if many farmers engaged in the same action, there would be a substantial impact on interstate commerce (Nicholson, 2006, p. 338). They determined that the case differed from *Lopez* and *Morrison*, because neither of those cases involved a nation-wide regulatory scheme that would be undermined if the government could not control regulated activity at the local level (Nicholson, 2006, p. 340). Furthermore, because of the “Supremacy Clause,” it did not matter that Raich’s actions were in accordance with state law because they were in violation of federal law which trumps the state act (Nicholson, 2006, p. 341). As a result, the Supreme Court held that the Controlled Substances Act was constitutionally valid, reversing the decision of the Court of Appeals (Nicholson, 2006, p. 342). However, in the same vein as the previous case, the Supreme Court did not rule on the constitutionality of the Compassionate Use Act, allowing it to continue on in seeming violation of federal law.

These past three cases have illustrated the Supreme Court’s power to serve as a check on the power of the federal government while still asserting the federal government’s authority over the states. However, interestingly, the Supreme Court has deliberately chosen not to rule on California’s Compassionate Use Act even though it appears to violate federal law. In 2009, San Diego and San Bernardino counties appealed to the Supreme Court to strike down the California law, because it violated the federal Controlled Substances Act (Savage, 2009). Yet, the Supreme Court rejected both appeals without comment (Savage, 2009). In *Gonzales v. Raich*, Justice Sandra

Day O'Connor dissented with the decision, declaring that one of the chief virtues of federalism is that "it promotes innovation by allowing for the possibility that 'a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country'" (Gonzales, 2005). Perhaps the Supreme Court is allowing that experiment to continue rather than choosing to strike it down. Certainly, in response to the lack of any clear Supreme Court doctrine, other states have followed in California's path and continued to liberalize their own marijuana laws. However, avoiding the constitutional question can lead to more controversy. The following section will continue to illuminate the disconnect between state and federal government policy in regards to marijuana. It will furthermore indicate the harm created in a system where there is no consistent federal and state policy centered around the drug that is declared by the National Institute on Drug Abuse to be the "most commonly abused illicit drug in the United States" (Newport, 2011).

### **Ramifications for States Rights:**

America's constitution has created a system of government in which the federal government has authority over state governments. This power was established in the landmark Supreme Court case *McCulloch v. Maryland* in which Chief Justice John Marshall determined the implications arising from the broad powers of the United States federal government (Cotton, 1905, p. 304). Determining that the federal government possessed the right and power to create a federal bank and that the states did not possess the power to tax the bank, Marshall established the sovereignty of the federal government over the states ("McCulloch," n.d). Noting that the federal government had been explicitly imparted with specific powers through the Constitution, he declared that



the sovereignty of the states could not hinder the carrying out of those duties. He asserted:

The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable, that it does not. ("Article 6," n.d.)

The state has the power to maintain its sovereignty over all things under its authority, but it cannot transgress the legitimate use of power by the federal government. This principle derives from the Constitution itself where it states in Article VI, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. ("The Constitution," n.d.)

Resultantly, the state is subordinate to the federal government in areas where their power to create policy overlap. The states are thus forbidden to act in a way that is contrary to the policies of the federal government. Although, this principle has been established, inconsistencies can still arise. America has seen this disconnect in its policies in regards to marijuana.

Despite this prohibition against state violation of federal law, America's federal and state policies have created a situation where the two are incompatible. Federal policy towards marijuana is contained in the Controlled Substances Act which classifies

marijuana as a Schedule I controlled substance, indicating that it “has a high potential for abuse,” that it “has no currently accepted medical use in treatment in the United States,” and that “there is a lack of accepted safety for use of the drug under medical supervision” (“Marijuana Resource,” n.d.). As a result, the federal government does not accept the concept of “medical marijuana” under federal law (“Marijuana Resource,” n.d.). On the other hand, states have continued to liberalize their marijuana policies. Currently, eighteen states and Washington D.C., have legalized medical marijuana for individuals facing debilitating medical conditions (Cohen, 2012). The Department of Justice has responded to this flouting of federal law by oftentimes ignoring it. While the Department still states that marijuana continues to be illegal under federal law, their guidelines indicate that focusing enforcement efforts on people who use marijuana as part of a treatment regimen for debilitating illness is not an efficient use of federal resources (“Marijuana Resource,” n.d.). However, they will still prosecute those who cultivate, sell, or distribute marijuana in violation of federal law (“Marijuana Resource,” n.d.). These continued prosecutions affect individuals such as Chris Williams, who began a marijuana grow house in Montana following the legalization of medical marijuana, and is facing a mandatory minimum sentencing of more than eighty years for the marijuana charges in addition to the possession of firearms in the midst of a drug-trafficking offense (Cohen, 2012).

This continued federal policy against medical marijuana stands in clear opposition to the will of the people. A 2011 CBS News poll found that seventy-seven percent of Americans expressed support for specifically permitting doctors to prescribe marijuana to treat serious medical conditions (Backus, 2011). Even with over three

quarters of the American public in support of medical marijuana, the federal government has not eased its laws. Rather, the federal government continues to deny the healing properties of marijuana even when studies indicate that marijuana alleviates symptoms such as nausea, vomiting, anorexia, neuropathic pain, and muscle spasticity (Danovitch, 2012, p. 94). In addition, patients with cancer, AIDS, and other diseases have reported that they have gained relief from their painful symptoms by smoking marijuana (Boyd, 2004, p. 1272). If they wish to partake in this form of relief, these patients are forced to circumvent federal law by obtaining it through state laws that permit medical marijuana. Yet, despite consideration of these beneficial effects, individuals should not ignore the side effects that marijuana can cause. Marijuana, like all medicines, possesses side effects which can include depression, paranoia, and hallucinations as well as chronic effects such as increased risk of cancer and lung damage associated with smoking and potential dependence on THC, one of the components of marijuana (Boyd, 2004, p. 1277). One could interpret these side effects as reasons why marijuana should be banned, but in the face of such popular support and disregard for the laws, a blanket ban is not an effective way to protect the public health. In his article for the *McGeorge Law Review*, Itai Danovitch celebrates those who work towards reforming drug laws rather than those who bypass them, because the FDA, fulfilling their role as a regulator, is more qualified than voters and legislators to continue to protect public health in the face of medical interventions (Danovitch, 2012, p. 96). If the Food and Drug Administration worked to mitigate the side effects of marijuana and properly regulate individuals who chose to partake of the drug, they could help protect the people of this country. This stance would be preferable to their

current indifference by allowing the states to control the market, even though the latter do not necessarily have the proper qualifications. By not confronting the issue and continuing to outlaw marijuana, the federal government is not seeing a reduction in the usage of marijuana. Rather, their inactivity is resulting in the states' action to provide medical marijuana to those who could benefit from it. The states' acts of compassion allow sufferers of certain medical diseases to have access to a drug that could help them without forcing them to obtain it from an illegal vendor. However, the states' actions also continue a trend of disregarding federal policy which is in clear opposition to the principles established in the Constitution.

Subsequently, an even more radical divergence from federal policy has been pursued by two pioneering states. A 2011 Gallup survey asking individuals whether they thought the use of marijuana should be made legal revealed that 50% of Americans agreed that it should be (Newport, 2011). During the November 2012 election, voters from Washington and Colorado channeled these feelings into action when they approved state ballot initiatives that have legalized possession of small amounts of marijuana (Wyatt, 2012). These state initiatives have continued to place the federal government in a difficult position, as marijuana is still illegal under federal law. No longer is this an issue simply about the federal government choosing to ignore compassionate care to those who are in need of medical treatment. Now, the federal government faces an initiative that allows the use of marijuana by consenting adults. As a result, the government will be forced to decide how they will proceed in this uncertain territory. Colorado's measure became effective on January 5, 2013 when adults were permitted to possess up to an ounce of marijuana with commercial sales as a possibility by 2014,

while Washington's initiative allowed possession of up to an ounce on December 6, 2012 when the state began the creation of a state-run sales operation (Wyatt, 2012). If these initiatives are allowed to go unhindered by the federal government, then they will allow the nation to move closer and closer to a more liberalized marijuana policy. However, as established by the landmark case *McCulloch v. Maryland*, the federal government does ultimately hold power over state governments, and these liberalized policies are only as powerful as the federal government allows them to be. Still, these state initiatives in regards to medical and legalized marijuana indicate a nation-wide shift towards a greater acceptance of marijuana and perhaps will lead to a future nation-wide legalization of the once-demonized drug.

Surely, the current situation in which the state government flouts federal law appears to be in violation of the Constitution. The federal government could proceed by deciding to enforce strict drug laws against the rebelling states, but the growing popular support for marijuana suggest that this may not be a successful solution. Another option would be for the federal government to liberalize its policies, either embracing medical marijuana, deferring to the states to decide whether they wish to continue criminalizing it, allowing its usage for medical purposes, or legalizing it altogether. Certainly, compassionate and practical legislation from both the federal and state level would ensure that the government could protect both its people's liberty and health. It would additionally allow for greater federal and state unity which continues to be threatened by this disconnect between legislation on the federal and state level. America is a country guided by a constitution, and adherence to it is one of the most powerful ways this country can maintain its liberty and unity.

**Conclusion:**

The Constitution of the United States of America declares that one of the reasons for its creation was to “secure the Blessings of Liberty to ourselves and our Posterity” (“The Constitution,” n.d.). The *People’s Law Dictionary* defines liberty as “freedom from restraint and the power to follow one’s will” (“Liberty,” n.d.). Certainly, this ability to follow one’s will has been pursued by individuals throughout America’s history, as people have fought for the right to be left alone. The government cannot always protect its people from themselves. Currently, excessive alcohol and tobacco usage are among the top three leading causes of preventable death in the United States, and despite age and location restrictions, both are still very legal (“Alcohol linked,” 2005). Marijuana has been shown to have health benefits which the federal government has refused to consider. In response, this lack of initiative forces the people to either rely on the states to be the guarantors of freedom or to directly engage the federal government in order to fight for their right to smoke. History has shown that the government will be tempted to enact regulations both of its own volition and based on the influence of powerful groups of society, but it is up to the people to fight for their freedoms. This ongoing conversation and struggle between the government and the people is one of the most beautiful parts of democracy and enables Americans everywhere to work for freedom and liberty for all.

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