

# **THE PATH FORWARD**

## **RETHINKING FEDERAL MARIJUANA POLICY**



**REP. EARL BLUMENAUER**

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**By Rep. Earl Blumenauer**

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## Executive Summary

After decades of failed policies and tremors of varying intensity, the tectonic plates of marijuana regulation abruptly shifted in November 2012 as the citizens of Washington and Colorado voted to legalize the drug for adult recreational use. Action accelerated again in the last two years, with noticeable changes in the federal response to marijuana, as well as at the state level as the legalization laws have been implemented. In the 2014 election, Oregon, Alaska and the District of Columbia voters passed legalization measures.

These developments continue to play out against the backdrop of the least effective, most questionable and arguably most destructive front in America's 'War on Drugs.' Marijuana has been classified as a Schedule I Controlled Substance for decades – meaning that it has a “high potential for abuse” and possesses “no currently accepted medical use in treatment in the United States.”<sup>1</sup> Other drugs in this category include heroin and LSD. Yet an estimated 19.8 million Americans were current (past-month) marijuana users in 2013, and nearly half of all Americans have tried it at least once.<sup>2,3</sup>

Oregon was on the forefront of this movement. In 1973, Oregon became the first state to consider legalizing marijuana for adult use. Although the vote in the House failed, legislation was passed that made the penalty for possession of small amounts of marijuana equivalent to a traffic ticket.<sup>4</sup> In the 42 years that followed, 17 other states and the District of Columbia also adopted policies that removed the criminal penalties for the possession of small amounts of marijuana.<sup>5</sup>

The next upheaval was the legalization of medical marijuana by states, starting with California in 1996.<sup>6</sup> The therapeutic qualities of marijuana have since proved persuasive in states across the political spectrum. The movement to allow medical marijuana has gained more momentum and legitimacy, with a total of 23 states and the District of Columbia having passed laws allowing for the legal use of medical marijuana.<sup>7</sup> An additional 12 states have passed laws allowing for the use of certain strains of marijuana with low Tetrahydrocannabinol (THC), the psychoactive component found in cannabis, and higher Cannabidiol (CBD), another compound found in marijuana that has been anecdotally linked to helping control seizures.<sup>8</sup>

Millions of people have been brought into the justice system for marijuana offenses. Over 609,000 people were arrested for possession in 2013, which represents the most recent data.<sup>9</sup> Too often people are serving time in jail for using a drug that more than half of the nation's population feels should be legal for adult recreational purposes and 83 percent believe should be legal for medical use.<sup>10</sup>

The rapid adoption of medical marijuana laws has given hundreds of thousands of people access to marijuana for everything from suppressing the nausea associated with chemotherapy to mitigating the effects of multiple sclerosis and chronic pain.<sup>11</sup> This situation has created a gray area, where medical marijuana enterprises are operating in a patchwork of conflicting local, state and federal regulations. Common sense suggests that

these enterprises have the potential for abuse and other criminal activity. Many people are likely using medical marijuana laws to access marijuana for other purposes.

Simultaneously, many well-intentioned business owners have also entered these emerging industries, often in compliance with state law, only to find they face a complicated patchwork of conflicting state and federal laws that prevent them from having bank accounts which cause them to operate cash-only businesses, raising serious safety questions.

Despite its widespread use, all types of marijuana technically continue to be illegal under federal law. The Department of Justice (DOJ) issued a memo in August 2013 signaling that the government will not interfere with state legal marijuana laws, both medical and adult, so long as the states implement a rigorous regulatory system for marijuana production, distribution and possession. This was bolstered by Congress in December 2014 through the passage of language preventing the DOJ from interfering with state medical marijuana laws. These are important and encouraging steps; however, they are not a permanent solution and still leave many unanswered questions.

Over two-thirds of people live in jurisdictions that have endorsed the use of medical marijuana in some form, and nearly 82 million people live in states where these laws passed by voter initiative.<sup>12</sup> In a time of transition for marijuana policy, the federal policy framework regarding marijuana use should be addressed to reduce confusion, uncertainty, and conflicting government action. Maintaining the status quo creates an inconsistent legal environment with law enforcement resources wasted and potential tax revenues lost.

Congress has the power to unravel this mess, and the last two years have seen significant progress in this area. Seventeen bills were introduced in the 113<sup>th</sup> Congress that would move the nation toward a more rational system. There were seven votes on the House floor on marijuana and hemp related measures, and on six of them, the House voted with bipartisan support of reform. Three of the measures also passed the Senate and became law.

- An amendment to the Farm Bill passed in the House, allows state departments of agriculture and colleges and universities to grow hemp for research purposes in states where it is legal. This was included in the final Farm Bill, which became law in 2014.
- Additional language was approved in the fiscal year 2015 spending bill to further protect these research programs.
- An amendment to protect state medical marijuana laws that had been offered for years to the Commerce, Justice, Science and related agencies appropriations bill passed for the first time in 2014 and was also included in the spending bill, which became law.

These are small steps, but represent a significant change from policies over the last four decades and signal a new mentality that will continue to evolve rapidly over the next few years.

No one should minimize the potential harmful effects of marijuana. This would be a better world without widespread abuse of substances that can damage health and quality of life, marijuana included. Marijuana is also known to have a damaging effect on the development of the young brain, and should never be in the hands of children.

The challenge is that as lawmakers seek to protect the health and safety of Americans through policies and laws, it is important to acknowledge when existing mechanisms do not work, go too far or cause more harm than good. This is the case with the federal government's current approach to marijuana. Right now, marijuana laws do not protect children, or prevent millions of Americans from using it.

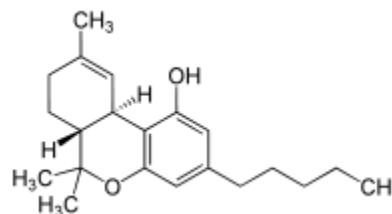
Instead, the lack of regulation creates a more dangerous environment for everyone, especially children. Under the current system, no one needs to show ID to get marijuana in the states where it remains illegal. The enforcement of failed marijuana laws is a misuse of public safety resources that could be better spent actually keeping communities safer.

Americans realize this. People have taken action through state and local efforts that are creating a new reality.

This report is a summary of the history and facts surrounding marijuana, its use and regulation, as well as a plan for a common sense path forward. The goal is to deal with the inevitable transition of marijuana policies and legalization – a transition already well under way.

## What is Marijuana?

Marijuana is the dried mixture of leaves, flowers, stems, and seeds from the hemp plant, Cannabis. It can be consumed as a psychoactive drug or as medicine. The primary psychoactive ingredient is tetrahydrocannabinol (THC).<sup>13</sup> Several additional biologically and therapeutically active – but not psychoactive – compounds are also available in the plant.<sup>14</sup> As a drug, the main effects of marijuana vary, but it is most often sought after for its euphoric and anti-anxiety properties. Medicinally, cannabis can be used to treat pain, lack of appetite, nausea associated with disease and medication, and many other conditions.



The hemp plant has many industrial uses. It can be readily used to create sustainable, useful products like rope, cloth, oil, wax and fuel. It can even be eaten. It produces negligible amounts of THC, and does not have psychoactive properties.

## *A Brief History of Marijuana in the United States*

The hemp plant's economic importance in America dates back long before the birth of our nation to the 17<sup>th</sup> century, when it was used in the production of rope, sails and clothing. Domestic production for industrial purposes flourished. During WWII, Americans were encouraged to grow hemp to assist with the war effort.

In the late 19<sup>th</sup> century, marijuana was introduced into western medicine and sold openly in pharmacies as a sedative and to reduce inflammation and muscle spasms.



With the turn of the 20<sup>th</sup> century, marijuana began to be used as a recreational drug in the United States. During Prohibition and the Great Depression, public and government concern regarding the potential harms of marijuana began to grow. There were racial overtones. Marijuana was seen as a drug used by racial minorities, especially Hispanics.

A series of anecdotal nonscientific reports linked the use of marijuana with violence, insanity, crime and social deviance. Such ideas have long been discredited, but by 1931, Cannabis was outlawed in 29 states.

In 1937, Congress passed the *Marijuana Tax Act* that restricted possession of the drug to individuals who paid an excise tax on certain medical and industrial uses. By 1942, Cannabis was removed from the U.S. Pharmacopoeia, the nation's official list of medicines.

Congress passed the *Boggs Act* in 1951, listing Cannabis as a narcotic and establishing minimum sentences for marijuana-related offenses. A first-offense marijuana possession carried a minimum sentence of two to ten years and a fine of up to \$20,000. In spite of these harsh laws, marijuana was widely used and heavily associated with the counterculture movement during the 1960s.

The 1970s and the Nixon Administration launched a massive war on drugs, in a way that was far more political than scientific. In 1970, Congress passed the *Controlled Substances Act*. If a rigorous analysis had been taken to tobacco, it would have listed tobacco among the most dangerous drugs because of its powerful addictive properties and damage to human health. Instead, tobacco remained a legal substance, likely due to its widespread use and the significant established economic interests at play. Marijuana, on the other hand, was classified as a Schedule I drug, defined as having a high potential for abuse and no medicinal value, the same classification given to drugs like heroin and LSD. Cocaine and amphetamines were classified as Schedule II substances.

At the same time, however, Congress repealed many of the most severe minimum drug sentencing laws, recognizing their failure to eliminate the widespread marijuana use throughout the 1960s. This was part of a fierce and growing debate about the proper approach to regulating drugs and enforcing drug laws.

Following the recommendations of the bipartisan Shafer Commission in the early 1970s, 16 states – beginning with Oregon - decriminalized the personal use of marijuana, treating first-time possession of a small amount more like a traffic offense than a crime.

The 1980s marked a return to a more aggressive approach to marijuana. New laws elevated federal penalties for marijuana possession and distribution with 100 marijuana plants carrying the same potential penalty as possession of 100 grams of heroin. Around the same time, however, the federal government initiated the Compassionate Investigational New Drug program, which allowed a small number of individuals to receive medical marijuana from the federal government. The program began in 1976 and accepted its last new patient in 1991. Four patients remain grandfathered in and receive approximately eight to nine ounces of medical marijuana each month.

In 1996, California voters passed Proposition 215, becoming the first state to allow the sale and medical use of marijuana for patients with AIDS, cancer and other diseases.

Since that time, 23 additional jurisdictions have passed laws allowing for medical marijuana programs, with half having done so through voter initiatives. An additional 11 states have passed laws allowing for the use of certain strains of marijuana with low THC, the psychoactive component found in cannabis, and higher CBD, another compound found in marijuana that has been linked to helping control seizures.

All medical marijuana laws remove state criminal penalties for certain categories of conduct. Each state's law is structured differently and all face challenges associated both with how to best control and regulate distribution and access, and challenges with the fact that marijuana remains a Schedule I substance and illegal to cultivate, distribute or possess under federal law.

These challenges were compounded in November 2012, when voters in Colorado and Washington passed initiatives that legalized the recreational adult use of marijuana. Both initiatives were approved with just over 55 percent of the vote.<sup>15</sup> These states have continued to take steps to implement these laws and began legal retail sales in 2014. In August 2013, the Department of Justice has indicated that it will not interfere with the implementation of these laws so long as the regulatory systems are robust and protect federal enforcement priorities.

So far, the implementation is moving forward successfully in both states. While many questions will continue to challenge these states, they are providing for the legal cultivation, sale and adult use of marijuana under a taxed and regulated system. Under these new systems, revenue has been collected, youth use has stabilized and driving under the influence citations have not gone up.

In November 2014, the legalization movement took another huge step as Oregon, Alaska and the District of Columbia all legalized marijuana. The Oregon measure passed with 56.1 percent of the vote, Alaska with 53.2 percent and Washington, DC with 70 percent.

## The Facts about Marijuana

- Marijuana is the third most popular recreational drug in America, behind only alcohol and tobacco.
- Over 43 percent of Americans over the age of 12 have used marijuana at some point in their life, either for recreation or medicinal purposes.<sup>16</sup>
- Approximately 19.8 million Americans have used marijuana within the last month.<sup>17</sup>
- Approximately 4 million young adults aged 12-17 have tried marijuana at least once, and 1.7 million are regular users.
- Marijuana remains illegal at the federal level, which makes it the most common illegal drug used in the United States.
- Marijuana is less addictive than both alcohol and tobacco.<sup>18</sup>
  - A 1999 study by the Institute of Medicine showed that 32 percent of tobacco users, 23 percent of heroin users, 17 percent of cocaine users and 15 percent of alcohol drinkers become dependent. In comparison, only 9 percent of marijuana users become dependent.
- Other drugs that are currently legal, such as alcohol, tobacco and prescription drugs, have significant negative public health effects:
  - Approximately 88,000 people a year die related to excessive alcohol use.<sup>19</sup>
  - Over 10,000 people a year are killed in alcohol-impaired driving accidents.<sup>20</sup>
  - Alcohol can lead to cirrhosis of the liver, general poor health and antisocial and often illegal behavior that includes violence.<sup>21</sup>
  - More than 480,000 deaths each year are attributed to smoking tobacco.<sup>22</sup>
  - Since 2003, prescription drug overdoses have killed more people than heroin and cocaine combined, and their abuse is now America's fastest growing drug problem.<sup>23</sup>



The facts suggest that U.S. policies on marijuana are of questionable value as we seek to protect the health and safety of Americans.



## **The Costs of the War on Marijuana**

The war on marijuana is waged at a tremendous cost of money and impact on human lives. Over 609,000 people in 2013 were arrested for marijuana possession.<sup>24</sup> It has been estimated that enforcement of federal marijuana laws (including incarceration) costs a minimum over \$5 billion dollars each year<sup>25</sup> and that states spent \$3.6 billion enforcing marijuana laws in 2010.

Such costs are not evenly distributed across racial and economic lines. The war on marijuana has had an overwhelmingly disproportionate impact on communities of color. According to the ACLU, between 2001 and 2010, there were over eight million marijuana related arrests in the United States. On average, African Americans are 3.7 times more likely to be arrested than white people for marijuana offenses.<sup>26</sup>

There have also been dramatic costs – financial and personal – associated with the black market for marijuana in the United States and Latin America, as much of the marijuana consumed in the United States on the black market has been grown in Mexico, providing drug cartel coffers with billions of dollars annually.<sup>27</sup>

While marijuana comprises a small fraction of the overall drug trade coming from Mexico, there have been recent reports that suggest that the legalization of marijuana in the United States may already be undercutting some of this trade. The amount of marijuana seized at the Mexico border by government officials has dropped 37 percent since 2011, the same time period when legally grown marijuana has become available in the United States.<sup>28</sup>

Undercutting these cartels could bring greater stability to the region and reduce the violence that has resulted in 100,000 drug trade-related deaths since 2006.<sup>29</sup> It should be noted that U.S. taxpayers have given Mexico \$2.4 billion in military and judicial aid over the past six years to combat drug cartels.<sup>30</sup>

## **Public Opinion Shifts on Marijuana**

While the United States government spends billions of dollars incarcerating citizens because of marijuana offenses, more than half of the American public believes that marijuana should be legalized. This figure has steadily risen over the last 30 years. Among young Americans the numbers are even more in support of changing policy.<sup>31</sup>

The American public demonstrates even stronger support for the use of medical marijuana, with 78 percent of Americans support allowing individuals to use medical marijuana.

Most telling: surveys also suggest over 65 percent of Americans believe that federal marijuana laws should not be enforced against people acting in compliance with state law.

Quite simply, the American public is far ahead of the federal government on marijuana regulation and policy. It is time for federal law to reflect this reality.

## Medical Marijuana

Medical marijuana is used to treat nausea, loss of appetite, muscle tension or spasms, chronic pain, and insomnia. It has often been used to treat these symptoms in patients suffering from cancer and the side effects of chemotherapy, HIV, neurological disorders, PTSD and other serious conditions. Despite the lack of extensive medical research, anecdotal evidence suggests a wide array of additional benefits.

The recognition of these benefits led to the first medical marijuana law in the United States - an initiative approved by voters in California in 1996.

Since then, 23 additional jurisdictions have passed laws that allow the use of medical marijuana by certain patients at the recommendation of a physician. An additional 11 states have passed laws allowing for the use of certain strains of marijuana with low THC, the psychoactive component found in cannabis, and higher CBD, another compound found in marijuana that has been linked to helping control seizures. Estimates vary from a low of 730,000 to 1.2 million medical marijuana patients nationwide, treated for a wide variety of ailments.<sup>32,33</sup>

Half of these laws were enacted by voter initiative. Many limit the amount a patient can possess at any one time and specify how they can obtain medical marijuana. Some states allow for large commercial or not for profit dispensaries, while others allow patients to grow marijuana themselves or designate a grower to supply their medicine.



To protect against arrest and prosecution, most states issue medical marijuana cards and have some form of patient registry.

States vary in the regulation and administration of their medical marijuana laws. In California, commercial dispensaries are allowed and regulated loosely on the local level, rather than by the state. There is no mandatory central patient registry, so it is impossible to ascertain how many patients purchase marijuana or for what they are using it.<sup>34</sup> In contrast, in Colorado, both medical and adult use dispensaries are heavily regulated by the state. Owners must undergo criminal background checks and subject their accounting to regular inspection for any ties to criminal activity and facilities must have continuous video monitoring.<sup>35</sup>

Some states do not allow dispensaries at all, but specify conditions for how a patient may obtain marijuana. Before Oregon passed its dispensary law in 2013, for example, the state only allowed patients to grow marijuana themselves, or designate a grower to do so for

them. Under this model, each patient was allowed up to six marijuana plants and any grower is allowed to grow marijuana for up to four people. Such small-scale operations have the advantage of not running afoul of the federal 100-plant sentencing and enforcement trigger. Washington’s medical marijuana program is similar. However, such an approach poses a greater challenge for state monitoring and regulation. In addition, the system can be confusing, and finding a grower can be difficult, forcing many patients onto the black market.

The following chart outlines which states allow for medical marijuana, how and when these laws passed, if dispensaries are allowed, if a central registry system exists and if the state also allows for adult use of marijuana.<sup>36</sup>

State	Year First Passed	Passed By	Dispensaries	Central Patient Registry	Adult Use
Alaska	1998	Voter Initiative		✓	✓
Arizona	2010	Voter Initiative	✓	✓	
California	1996	Voter Initiative	✓	✓**	
Colorado	2000	Voter Initiative	✓	✓	✓
Connecticut	2012	Legislature	✓	✓	
DC	2010	Legislature	✓	✓	✓
Delaware	2011	Legislature	✓	✓	
Hawaii	2000	Legislature		✓	
Illinois	2013	Legislature	✓	✓	
Maine	1999	Voter Initiative	✓	✓**	
Maryland	2014	Legislature	✓	✓	
Massachusetts	2012	Voter Initiative	✓	✓	
Michigan	2008	Voter Initiative		✓	
Minnesota	2014	Legislature	✓	✓	
Montana	2004	Voter Initiative		✓	
Nevada	2000	Voter Initiative	✓	✓	
New Hampshire	2013	Legislature	✓	✓	
New Jersey	2010	Legislature	✓	✓	
New Mexico	2007	Legislature	✓	✓	
New York	2014	Legislature	✓	✓	
Oregon	1998	Voter Initiative	✓	✓	✓
Rhode Island	2006	Legislature	✓	✓	
Vermont	2004	Legislature	✓	✓	
Washington	1998	Voter Initiative	✓*		✓

\* Washington’s dispensaries are connected to the adult use system, not the medical system.

\*\* The patient registries in California and Maine are voluntary.

## Legalization of Personal, Adult Use of Marijuana

In November 2012, Colorado and Washington became the first states to move the conversation beyond medical marijuana when voters in both states passed initiatives legalizing marijuana under state law.

### *Colorado*

In Colorado, voters passed Amendment 64 with 54.8 percent of the vote, making it legal for someone 21 years or older to possess up to one ounce of marijuana or grow up to six plants for personal use.<sup>37</sup> Under the law, marijuana facilities were authorized to grow and sell marijuana with state licenses.

In November 2013, Coloradans approved a 15 percent excise tax on marijuana, plus a 10 percent sales tax on marijuana sales that began in January 2014.<sup>38</sup>

In 2014, Colorado marijuana businesses sold \$386 million in medical marijuana and \$313 million in adult use sales.<sup>39</sup> Together, these sales have generated \$63 million in tax revenue for the state, with an additional \$13 million collected in licenses and fees.<sup>40</sup>

At the same time, youth use of marijuana is reported to have gone down, not up. Intoxicating driving statistics have not gone up, despite fears. Arrests for marijuana offenses have plummeted, saving resources. The criminal market for marijuana in Colorado has decreased significantly and 58 percent of marijuana sales are now in the regulated market.

### *Washington*

In Washington, voters passed Initiative 502, with 55.7 percent of the vote, making it legal for an individual 21 years or older to possess up to one ounce of marijuana.<sup>41</sup>

The first legal sales began in July 2014. The state licenses producers, processors and retailers, with a 25 percent tax imposed at each transaction point in the market: when the grower sells it to the processor, when the processor sells it to the retailer and when the retailer sells it to the customer.<sup>42</sup>

So far, there have been \$29 million in excise taxes collected on marijuana sales, not including retail sales taxes.<sup>43</sup> Like in Colorado, marijuana related arrests have also dropped and DUIs have not gone up.

In both states, the structure of the law is set up to not change the existing medical marijuana laws.

Oregon, Alaska and the District of Columbia all legalized marijuana in November 2014. Oregon passed the measure with 56.1 percent of the vote.<sup>44</sup> Alaska passed the measure with 53.2 percent.<sup>45</sup> Washington, DC passed it with 70.1 percent.<sup>46</sup>

Since the election, however, Congress included language in the FY15 Omnibus to block DC from implementing a tax and regulate structure surrounding their laws. This is a setback that disrespects the will of the District of Columbia voters and should be repealed as soon as possible.

## **The Federal Policy on State Marijuana Laws**

### *Schedule I*

The Controlled Substance Act created five regulated substance categories, scaled largely based on potential for abuse and medicinal value. Schedule I, the most controlled category, is defined as having a high potential for abuse and a no medicinal value, and is illegal to cultivate, possess and distribute under any circumstances, with the exception of federally approved research.

Marijuana is classified as a Schedule I substance, along with heroin and LSD. It has remained at this level on the schedule despite widespread medicinal use and ample evidence that it is far less addictive and damaging than other Schedule I drugs.



There are two ways to change the Schedule of a substance. One is through an act of Congress. The Administration, either through petition or by recommendation of the Attorney General or the Secretary of Health and Human Services can also initiate a review. This triggers an official analysis of available science to determine if a rescheduling is appropriate.

To date, there have been many official petitions requesting the rescheduling of marijuana and all have been denied based primarily on a lack of certain scientific evidence demonstrating medicinal value. The lack of scientific evidence, however, is largely tied into the fact that federal law makes conducting research on medical marijuana very difficult. This has created a Catch 22 situation. There are currently two active petitions under review.

In February 2014, 18 members of Congress sent a letter asking the Administration to reschedule marijuana. While not a formal petition, it suggests a changing sentiment in Congress and in public perception.

### *Enforcement*

In the absence of rescheduling or de-scheduling marijuana, the federal government has had to figure out how to enforce federal marijuana laws in states where it is legal. Anyone in possession of marijuana is breaking federal law, despite a state medical marijuana card or

buying marijuana from a licensed store in Colorado or Washington State. However, over the years, the federal government has taken varying positions as to how and where they will enforce federal law on this front, considering limited resources and the will of the voters in the states.

Prior to 2009, the Administration had a very tough stance on marijuana laws. It can be argued that this was a significant reason that many of the early medical marijuana states had looser regulations than current medical marijuana laws, with optional patient registries and growing your own marijuana options that are not as easily monitored.

In 2009, the Obama Administration began to deviate from these previous policies. At the time, 14 states had passed medical marijuana laws despite the fact that medical marijuana remains illegal under federal law. The DOJ sent a memo to federal prosecutors, encouraging them to deprioritize prosecuting individuals “whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana,” and instead focus on providers who violate both state and federal law, and those who operate medical facilities as a front for criminal activity. This letter is commonly referred to as the “Ogden Memo.”<sup>47</sup> As a result, many states moved forward with enacting medical marijuana laws and establishing systems for regulating production and distribution.



Then in 2011, the DOJ further clarified its policy with the “Cole Memo,” stating that laissez-faire approval did not apply to large-scale commercial operations that cultivate, sell or distribute marijuana, regardless of whether or not they are in compliance with state law.<sup>48</sup> DOJ claims that many of these facilities were operating as fronts for criminal activity which state regulation has been insufficient to prevent. The federal government then followed by enforcing federal

law relating to medical marijuana, and facilities across the country were raided by the Drug Enforcement Administration (DEA) or otherwise targeted by the DOJ.<sup>49</sup>

The policies have been further clarified to account for the passage of full legalization measures in Washington and Colorado. In answer to these laws and whether or not the Administration would enforce federal law, President Obama responded in an December 2012 interview saying that, “we have bigger fish to fry.” Then in August 2013, the DOJ issued a memo to local U.S. Attorneys guiding them to not prosecute individuals producing, distributing or possessing marijuana in the states where it is legal, so long as the states

implement a rigorous regulatory system and enforcement mechanism that protects certain federal government priorities<sup>50</sup>, such as not distributing to minors, or trafficking other controlled substances.

Following this, the Administration released guidance in February 2014 to banks, with the purpose of creating a framework by which they can provide banking services to marijuana businesses without breaking federal banking laws.

In December 2014, the federal government took another huge step forward, by stating that it will not block Tribal entities from growing and selling marijuana on sovereign Indian lands, even in states where marijuana is not yet legal.

Also in December 2014, Congress included language in a FY15 spending bill blocking DOJ and DEA from enforcing federal marijuana laws in contravention of state medical marijuana programs, bolstering the existing policy, and for the first time, codifying something into law supporting state medical marijuana laws.

## **Challenges**

### *Conflict between state and federal law*

Federal law continues to define marijuana as an illegal controlled substance despite 24 jurisdictions allowing medical marijuana, five jurisdictions with legalized adult use and an increasing number of Americans who support legalization. There are a number of consequences associated with this conflict:

### *Enforcement*

The Department of Justice has indicated that it is willing to work with states that have legalized marijuana to ensure that they protect certain federal enforcement priorities, such as preventing trafficking to other states and keeping marijuana out of the hands of minors. So long as states establish regulatory and enforcement mechanisms that protect these priorities, the DOJ has indicated that it will not interfere. This is a welcome step, as strict enforcement of marijuana laws will only become increasingly difficult, and costly. However, this memo is only guidance, is subject to change and only applies to the current Administration.

In December 2014, Congress included language in a FY15 spending bill blocking DOJ and DEA from enforcing federal marijuana laws in contravention of state medical marijuana programs.

This is not a permanent solution and does not answer all the necessary questions. Since it only applies to medical marijuana, it leaves uncertainty surrounding states that have legalized adult use of marijuana. Additionally, this will only last one year and will need to be revisited annually.

So long as marijuana is illegal under federal law, the enforcement of those laws by federal officials in states with different laws will always remain a potential area of conflict.

### *Federal Tax Challenges*

In 1982, Congress responded to a drug dealer claiming a yacht and weapons purchases as business expenses by enacting section 280E of the federal tax code, which denies anyone trafficking in a Schedule I or II substance the ability to deduct business expenses from their taxes. Congress did not foresee legitimate medical marijuana – and soon, adult use marijuana – businesses that would operate in compliance with state laws and still be subject to Section 280E. These businesses often pay a tax rate in the range of 65-75 percent, compared to 15-30 percent for similar businesses, creating a burden that can often put small dispensaries out of business.<sup>51</sup> Complicating matters, many state tax systems link to provisions in the federal tax code. In these situations, even where medical marijuana is legal, business expenses cannot be deducted from state taxes.

### *Banking and Business Challenges*

Federal banking provisions make it very difficult for any business dealing with marijuana to obtain a loan or register an account with a bank. Most banks would not risk federal prosecution. Therefore, many medical marijuana businesses have difficulty accessing capital and are forced to operate on a cash-only basis, which raises the risks for money laundering, tax evasion, robbery and other crimes.

Recognizing this as a significant safety concern, the DOJ and the Financial Crimes Enforcement Network released guidance in February 2014 to banks that wish to provide services to marijuana businesses and avoid prosecution.

Despite this guidance, however, many banks remain apprehensive about offering services until a permanent legislative change occurs, and most marijuana businesses continue to operate as cash-only enterprises, creating significant safety risks to business owners and employees.

In addition, insurance companies and security firms often cite federal laws as the reason they cannot do business with the marijuana industry.

### *Medical Marijuana Research*

In addition to being a tightly controlled Schedule I substance, marijuana is also regulated in accordance with a number of international treaties. In one of these treaties, the Single Convention on Narcotics, it is required that signatories set up a system under which the government has monopoly control over the production and distribution of marijuana for research purposes.

In the United States, this has been implemented in the form of a single contract that the National Institute on Drug Abuse (NIDA) holds with the University of Mississippi, which in



turn grows all the marijuana used in federally legal research. Much of this research is federally funded basic science research at the National Institutes of Health or research conducted by NIDA on the negative impacts of marijuana as an addictive drug.

Following the 1996 legalization of medical marijuana in California, a National Institutes of Health panel of experts called for additional studies to properly evaluate marijuana's medical potential.<sup>52</sup>



In answer to this and to questions about how non-federally funded researchers can conduct research that will allow them to turn marijuana or derivatives of marijuana into a FDA regulated medicine, the Department of Health and Human Services issued guidance in 1999 setting up a system by which such non-federally funded researchers could access the NIDA grown marijuana at cost. This guidance includes a number of parameters, which must be met, and creates a unique review process that comes together each time an application is submitted. This review process is tasked to determine scientific merit of an application, and is in addition to the review process that the same researcher will have to go through with the FDA who approves applications to test new drugs, an Institutional Review Board which will look at the ethics of researching with humans, and the DEA, which will need to issue a special Schedule I research license.

This duplicative review process comes with no time limits. Researchers have no idea how long they will wait for approval, or how long it will take to get marijuana.

The system has not fostered robust non-federally funded research, since over the course of the system's existence only 18 applications have been submitted to NIDA. This is despite the fact that over one million patients are using medical marijuana nationwide.

The review process is not the only deterrent. If a researcher were to get through this bureaucratic process, they would then only have available to them marijuana grown at the University of Mississippi and then would have no source of marijuana to continue to use if their drug is approved for use.

The system is complicated and uncertain. As a result, important research has been stymied in the United States. Research is happening primarily in other countries that allow the private grows of marijuana for research with proper licenses.

The federal government has taken small steps to ease the barriers, such as increasing the supply of research grade marijuana, but it is nowhere near enough. The system needs to be completely changed.

A number of major health care organizations, such as the American Academy of Pediatrics and the American Medical Association agree that it is essential to change policies in order to better enable research. Robust knowledge of how and why marijuana is helpful and also where it may be harmful when used medicinally, is long overdue.

### *Veterans Access to Marijuana*

One group of Americans – veterans – is particularly disadvantaged by the discrepancy in federal and state medical marijuana laws. Like many Americans, many veterans now seek medical marijuana to treat conditions ranging from seizures, glaucoma, anxiety, chronic pain and nausea. There are also nine states and the District of Columbia that allow physicians to recommend medical marijuana for the symptoms of Post-Traumatic Stress (PTS), due to a growing body of evidence suggesting that marijuana offers relief when nothing else has.<sup>53</sup>

Despite this growing state availability of medical marijuana, the Department of Veterans Affairs issued Directive 2011-004 "Access to Clinical Programs for Veterans Participating in State-Approved Marijuana Programs" in January 2011. This specifically prohibits VA medical providers from completing forms brought by their patients seeking recommendations or opinions regarding participation in a state marijuana program. That means that if a veteran wants to use medical marijuana in a state where it is legal, they either must obtain it off the black market or they must seek a physician recommendation outside of their usual health care provider.

Veterans should not be forced outside of the VA system to seek a treatment that is legal in their state. At the same time, VA physicians should not be denied the ability to offer a recommendation they think may meet the needs of their patient.

### *Hemp*

Hemp is widely used in a variety of consumer products in the United States. Current industry estimates report that U.S. retail sales of all hemp-based products is estimated at \$620 million per year and that hemp can be used in over 25,000 products around the world.<sup>54</sup> Despite its proven industrial use in products such as paper, fabrics, insulation and more, current federal marijuana laws make it illegal to grow industrial hemp in the United States.

Despite this, 20 states have passed laws removing barriers to cultivation of industrial hemp, but the majority of these states had not moved forward with implementing these laws due to the federal conflict.

When the Obama Administration released guidance regarding state marijuana laws and federal interference, some states interpreted this as applying to hemp as well, since the federal government does not distinguish hemp from marijuana. As a result, states like Kentucky, Colorado and Vermont have moved forward with implementing their industrial

hemp laws. There is still ambiguity; however, about what would happen under a new administration, as the guidance could be adjusted at any time.

Given the negligible levels of THC in the product, the fear of industrial hemp is not only misplaced, it harms the economy by forcing companies to import raw hemp. Clearly, this is a missed opportunity for American farmers and related industries.

Through the passage of the Farm Bill in early 2014, Congress allowed state departments of agriculture and colleges and universities in legal hemp states to launch research pilot programs with hemp. This was an important step, however, it needs to be expanded upon to allow cultivation of hemp across the country.

### *Environmental Challenges*

Illegal outdoor cultivation of marijuana, often on public lands by large drug cartels, poses significant environmental problems.

In 2013, illegal marijuana grows were found in 72 national forests in 22 states. These grows are often the site of the dangerous use of chemicals from the overuse of common chemicals to the use of toxic chemicals banned in the United States. These grows also require significant water use and often draw water from streams and creeks that provide critical habitat for endangered species. Illegal marijuana grows have been listed as a factor in the decline of two endangered species.

### *Other Federal Challenges*

As the states that have legalized adult use of marijuana move forward, more and more questions will come up regarding federal policy and state law. For example, questions have arisen about how to handle access to water rights controlled by the federal government in western states, if it is suspected that water is going to marijuana grows. Questions have come up about the use of FBI background checks for marijuana businesses. Questions have also arisen about whether or not the IRS should charge additional fees to businesses that pay their taxes in cash, which is a normal policy, but the only option available to marijuana businesses. With the current system, questions like these are inevitable and will ultimately only be completely resolved by legalizing marijuana at the federal level.



While great progress has been made, on its whole, the current legal system surrounding marijuana is a patchwork of conflicting laws and policies that directly impact businesses and

the American people. As more states move to legalize the substance both medical and adult use, the problems will only get worse.

With this patchwork system, many patients who need marijuana for legitimate medical purposes often can't obtain it legally, including veterans. Some are forced onto the black market, risking their safety and dealing with questions of availability and quality. Simultaneously, medical marijuana programs have the potential to become safe havens for those looking to use the drug for relaxation or adult use purposes.

Today, legitimate marijuana businesses can't operate like other businesses, and state tax laws often aren't consistent with their marijuana laws. Federal prosecutors and local law enforcement in each state often handle the situation differently, and the entire industry – an industry that many Americans support – remains clouded by uncertainty, illegitimacy and fear.

## Opportunities

It is time to make a change.

While individual states remain the laboratories of innovation, it is time for the federal government to make sure that states, businesses and individuals are able to act in an environment that has coherent and consistent laws. Congress should pursue each of the following options:



### 1. Tax and regulate marijuana

Considering the growing number of jurisdictions that legalize medical marijuana and the five jurisdictions that legalize adult use, it is time that Congress end the federal prohibition on marijuana, removing it from the *Controlled Substances Act* entirely and creating a regulatory and taxation framework, similar to the frameworks in place for alcohol and tobacco.

A specific tax on marijuana grown for all purposes should be imposed to help fund substance abuse dependency treatment, law enforcement and help reduce the federal debt.

Revenue estimates from taxing marijuana vary due to uncertainties surrounding the existing marijuana market and how legalization and regulation would impact price and consumption habits. Assuming increased legal consumption and reduction in prices, a \$50 per ounce tax, for example, would raise estimated revenue of \$6.8 billion annually.<sup>55</sup> Any

study of the fiscal impact should also include the savings generated by reduced expenditures on marijuana interdiction and enforcement.

This represents a unique opportunity to save ruined lives, wasted enforcement and prison costs, while simultaneously creating a new industry, with new jobs and revenue that will improve the state and federal budget outlook.

Passing such legislation would represent a key part of a comprehensive approach to marijuana reform. However, Congress should also consider additional legislation that would help to ease problems during this transitional period, such as addressing medical marijuana specifically to ensure patient access, and alleviating specific tax and business challenges.

## **2. Allow states to enact existing medical marijuana laws without federal interference**

The federal government needs to allow states to enforce their laws without fear of interference by removing barriers to medical marijuana distribution. Removing marijuana from the schedule, or at least rescheduling marijuana to Schedule III, IV or V on the *Controlled Substances Act*, paired with language protecting states' rights will ensure that patients and providers that operate in compliance with state law remain immune from federal prosecution.

Congress should pass legislation that will accomplish this by declaring that in a state where medical marijuana is legal, no provision of the *Controlled Substance Act*, or the *Federal Food, Drug and Cosmetic Act* shall prohibit or restrict:

- The prescription or recommendation of marijuana for medical use by a medical professional.
- An individual from obtaining, manufacturing, possessing or transporting within their state marijuana for medical purposes.
- A pharmacy or other entity authorized to distribute medical marijuana.
- An authorized entity from producing, processing, or distributing marijuana.

Taking such action will help ensure patients have safe access to medical marijuana, and ensure that states are free to enact comprehensive regulatory oversight of their programs without fear that they will be putting business owners and patients at risk or breaking federal law.

## **3. Reduce barriers to medical marijuana research**

Congress should pass legislation changing the system by which non-federally funded researchers access marijuana by ensuring that all researchers that receive FDA, IRB and DEA approval can access marijuana without further review. Congress should also work with the Administration to remove the current federal monopoly on production and create

a framework to license private growers to supply marijuana for federally approved research.

Over time, with increased access to research, marijuana based drugs may be approved by the FDA and become part of the prescription drug supply available in the United States.

#### **4. Allow veterans equal access to medical marijuana**

Congress should pass legislation to immediately remove barriers to veterans accessing medical marijuana in states where it is legal, freeing up VA physicians to recommend medical marijuana to their patients and fill out associated forms if they so choose.

#### **5. Remove the ban on industrial hemp**

Congress took steps in 2013 and 2014 to allow for research on hemp in states that have approved it for industrial use. Many states have also used guidance regarding released from the Administration regarding prosecution and state marijuana laws to move forward with their cultivation laws. This however, is a temporary solution.

Congress should next completely remove the senseless federal ban on the large-scale cultivation of industrial hemp by passing legislation removing industrial hemp from the definition of marijuana. This would allow a new agricultural industry to begin to flourish in the United States.



#### **6. Allow the marijuana industry to operate in a normal business environment**

The existing medical marijuana industry and its expansion to include adult use of marijuana has and will continue to result in many new businesses facing the tax and banking problems that come with the territory.

Congress should immediately remove these tax and banking barriers to allow legitimate businesses to operate in states that have legalized marijuana for medical and adult use.

To do this, Congress should amend the Internal Revenue Code to allow tax deductions for normal business expenses incurred by dispensaries and other medical marijuana businesses. This is how all other businesses operate and allowing such deductions will help to both legitimize the industry and make it more accessible.

Congress should also protect banks from federal fines or seizures simply because they accept deposits from medical marijuana businesses. Currently, these businesses operate as cash-only enterprises which are high risk and ripe for abuse.

While there has been Administration action on this, many banks remain unsure or believe that without Congressional action, the risks to them remain too great. With Congressional definitive action, they can begin to function like normal businesses, making deposits, managing accounts and issuing paychecks.

## **7. A sensible drug policy working group**

There are many members of Congress interested in these issues, with wide ranging beliefs on how to proceed with marijuana policy going forward. They all agree, however, that the current system is broken. Members of Congress working on these issues should formalize their working relationship. A Sensible Drug Policy Working Group will educate members of Congress and their staff on the facts of marijuana use and national drug policy and work to pass comprehensive legislation to address the issues outlined in this report.

## **Legislation in the 113<sup>th</sup> Congress**

There were 17 bills introduced in the 113<sup>th</sup> Congress that would have taken steps to achieve the goals outlined in this report. Some are highly specific and others more broad, but together they represent a growing effort to engage new leaders and new constituencies in the effort toward reform. Most of these bills have both Democrat and Republican support.

A number of these have already been introduced in the 114<sup>th</sup> Congress at the time this report was published, with many more anticipated in coming months.

### **Tax and Regulate:**

- H.R. 501, the *Marijuana Tax Equity Act*, would create a taxation framework for marijuana. This bill has been reintroduced in the 114<sup>th</sup> Congress as H.R. 1014, the *Marijuana Tax Revenue Act*.
- This legislation, combined with H.R. 499, the *Ending Federal Marijuana Prohibition Act*, will establish the federal regulatory and taxation system legal under state law. This bill has been reintroduced in the 114<sup>th</sup> Congress as H.R. 1013, the *Regulate Marijuana Like Alcohol Act*.

### **Medical Marijuana:**

- H.R. 689, the *State's Medical Marijuana Patient Protection Act*, would explicitly establish that medical marijuana patients and business are free from federal interference, making permanent the sentiments of the DOJ guidance, which remains subject to change at any time. This legislation will also make it easier to conduct research on the therapeutic uses of marijuana.
- H.R. 710, the *Truth in Trials Act*, would allow medical marijuana patients to introduce evidence in federal court that they followed state law.

- H.R. 784, the *States' Medical Marijuana Property Rights Protection Act*, would prevent the DOJ from initiating civil asset forfeiture proceedings against property owners of state-sanctioned medical marijuana treatment centers. This bill has been reintroduced in the 114<sup>th</sup> Congress as H.R. 262.
- H.R. 4498, the *Legitimate Use of Marijuana Act*, would reschedule marijuana from Schedule I to Schedule II, and provides that in a state in which marijuana may be prescribed for medical use, no provision of the CSA or Food, Drug and Cosmetic Act shall prohibit the prescription or use under state law.
- H.R. 5526, the *Charlotte's Web Medical Hemp Act*, would allow the states that have passed "CBD-only," or laws allowing for marijuana with less than .3 percent THC to be used medicinally, to move forward with their laws. This has been reintroduced in the 114<sup>th</sup> Congress as H.R. 1635.
- S. 68, the *Compassionate Access, Research Expansion and Respect States Act* was introduced in March 2014, and was the first comprehensive medical marijuana bill ever introduced in the Senate. This bill combines and builds on many of the concepts introduced and voted on in the House in the 113<sup>th</sup> Congress. This has been introduced in the House as H.R. 1538.

#### Veterans Access to Marijuana:

- H.R. 5762, the *Veterans Equal Access Act*, would authorize VA physicians and other health care providers to provide recommendations and opinions regarding the use of medical marijuana to veterans who live in medical marijuana states as they see fit. This bill has been reintroduced in the 114<sup>th</sup> Congress as H.R. 667.

#### States' Rights:

- H.R. 1523, the *Respect State Marijuana Laws Act of 2013*, would legalize marijuana at the federal level to the extent that it is legal at the state level. This legislation has broad support on both sides of the aisle.
- H.R. 964, the *Respect States' and Citizens' Rights Act of 2013*, would undue federal preemption of state marijuana laws.

#### Equal Tax and Banking Treatment:

- H.R. 2240, the *Small Business Tax Equity Act*, would allow marijuana businesses operating in compliance with state law to deduct their business expenses from their taxes. This legislation has broad bipartisan support and was endorsed by Grover Norquist of Americans for Tax Reform.
- H.R. 2652, the *Marijuana Businesses Access to Banking Act*, would clarify that legitimate marijuana businesses have access to federally regulated financial institutions.

#### Remove Ban on Industrial Hemp:

- H.R. 525, the *Industrial Hemp Farming Act*, would remove industrial hemp from the definition of marijuana and allow farmers in states that have legalized industrial hemp to participate in the market. This bill has been reintroduced in the 114<sup>th</sup> Congress again as H.R. 525.



- S. 359 was offered in the Senate, and has the same language as H.R. 525. This bill has been reintroduced in the 114<sup>th</sup> Congress as S. 134.

#### Other Legislation

- H.R. 1635, the *National Commission on Federal Marijuana Policy Act*, would establish a commission to look at efficacy of existing marijuana policies.
- H.R. 4046, the *Unmuzzle the Drug Czar Act of 2014*, would remove language from our laws that currently prohibit the President's Office of National Drug Control Policy from studying the legalization of a Schedule I substance. They are currently required by law to oppose any attempts to legalize marijuana as a result.
- H.R. 2735, the *PLANT Act*, would establish new penalties for causing environmental damage while cultivating marijuana on federal lands or trespassing on private property.

### **Marijuana-related votes in the 113<sup>th</sup> Congress**

There were seven votes on the House floor regarding marijuana policy in the 113<sup>th</sup> Congress, outlined below. On six of these, the House voted in favor of reform.

- The Polis, Massie, Blumenauer industrial hemp amendment to the Farm Bill allowed colleges and universities to grow and cultivate industrial hemp for research purposes in states where industrial hemp cultivation is legal under state law. This passed the House 225-200, and an expanded version of this amendment was included in the final Farm Bill, which passed both chambers and became law.
- The Blumenauer amendment to the Military Construction and Veterans Affairs appropriations bill would have freed up Veterans Administration medical providers to fill out forms brought by their patients seeking recommendations or opinions regarding a Veteran's participation in a state marijuana program. This amendment narrowly failed 195-222.
- The Bonamici hemp amendment to the Commerce, Justice and Science appropriations bill would allow farmers to grow industrial hemp in states where it is legal. It passed 237-170, but the Senate did not take up this bill.
- The Massie hemp amendment prohibits the DOJ from violating section 7606 of the Farm Bill, the research provision passed earlier in the Congress. The DEA had tried to seize hemp seeds headed for Kentucky and released them upon being sued by the State. The purpose of this amendment was to further protect the original provision. This amendment won 246-162, and was included in the FY 2015 omnibus bill that became law in December 2014.

- The Rohrabacher-Farr medical marijuana amendment to the Commerce, Justice and Science Appropriations bill prohibits DOJ from spending federal funds to enforce marijuana laws in a way that interferes with state medical marijuana programs. This passed in the House 218-189, and was included in the FY15 omnibus that became law in December 2014.
- The Heck amendment to Financial Services Appropriations bill would expand access to banking services for state-legal marijuana businesses. This amendment passed 231-192 but the Senate did not take up the bill.
- The Fleming amendment to Financial Services would have rolled back access to banking services for marijuana businesses, but failed 186-236.

## **Conclusion**

The path forward for a more sensible drug policy is clear. Over 213 million people live in jurisdictions that have endorsed the use of marijuana in some form. 16.9 million people now live in jurisdictions that have voted in favor of legalizing the full adult use of marijuana. More than half of Americans agree that it should be legal.

When this report was first written in the beginning of 2012, federal movement to respond to these factors had been minimal. The Administration was largely silent on how it would respond to state legalization of adult use, and no chamber of Congress had voted successfully on a marijuana reform policy. The American people were clearly far ahead of the government.

The last two years, however, have seen monumental progress on every front – at the state level with regulation and taxation, at the Administration level with its use of prosecutorial discretion in marijuana states, and in Congress with the introduction of 17 marijuana related bills in the House, and with passage of multiple marijuana related reforms on the House floor, some of which ultimately became law.

There is much farther to go. Marijuana should be legalized and regulated at the federal level, once and for all getting the federal government out of the way of reform and making the government a helpful partner in regulation that will make communication safer in the states that have chosen to legalize marijuana.

In the absence of this broad reform, Congress can take action to ease the barriers to medical marijuana research. Congress can help provide safe access to marijuana for patients, including veterans, who need it and can obtain it legally under state law. These reforms can help to provide the emerging marijuana industry with some certainty and allow businesses the ability to deduct expenses and deposit money like all other businesses.

The current system is broken. It wastes resources and destroys individual lives, in turn damaging families and entire communities. The progress over the last two years has been stunning, and it is essential that moving forward build on that progress to once and for all create a truly rational marijuana policy for the 21<sup>st</sup> century.

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<sup>8</sup> Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin.

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- <sup>54</sup> [http://thehia.org/PR/2015-03-12-PR-2014-Annual-Retail-Sales-for-Hemp-Products-Estimated-at-\\$620-Million.html](http://thehia.org/PR/2015-03-12-PR-2014-Annual-Retail-Sales-for-Hemp-Products-Estimated-at-$620-Million.html)
- <sup>55</sup> CRS Report: “Federal Proposals to Tax Marijuana: An Economic Analysis.” Page 14.