



The Great Cannabis Debate

Marijuana, also called weed, pot, dope or cannabis, refers to the dried leaves, flowers, stems and seeds of the *Cannabis sativa* or *Cannabis indica* plant. It contains tetrahydrocannabinol (THC), a psychoactive compound, as well as other non-mind altering active compounds like cannabidiol (CBD). The federal government banned the sale, cultivation and use of marijuana 80 years ago, and it remains so today. The law is one of the most debated topics in U.S. politics and causes much consternation for those involved in the industry, legal experts prosecuting and defending offenders and states that are at the mercy of the policymakers of the day. Let's take a closer look at what is inside the debate.

THE CLASSIFICATION

The ban on marijuana stems from its federal government classification as a [Schedule 1 substance](#) (drugs perceived to have no medical value and a high potential for abuse); the same category as heroin. This vague category receives more federal scrutiny because of its non-medical value label, not necessarily because marijuana and heroin are viewed as equally dangerous. To reschedule marijuana out of its current category would involve a large-scale clinical trial to prove its medical merits; but without legalization, it's caught in a catch-22.

THE CONFLICT

Marijuana legalization is currently a polarizing conflict between state and federal laws. Despite the federal policy on marijuana, 34 states have passed broad marijuana legalization resolutions due to the relaxed approach of previous administrations. Usually when federal and state laws conflict, federal law wins out. Marijuana legalization is no different. For example, an individual can be charged with a federal crime for marijuana possession, even though his/her state allows it. So how do state attorneys address this complex issue? And why have states passed legalization laws when it is illegal federally?

THE FACTS

To understand the conflict, one must know [two key facts](#).

Fact #1: The president alone cannot change a drug's classification; it must be done through an effort of the president and attorney general or secretary of health and human services.

Fact #2: Congress can pass legislation to reschedule marijuana.

Efforts have been initiated to legalize marijuana in some form over the years, but they have run into a roadblock at the clinical trial step. To counter this obstacle, various presidents have relaxed criminal penalties for marijuana, perhaps in recognition of its nominal risk. In other words, they have operated in the gray area between law and policy. For example, the Obama Administration imposed certain marijuana requirements on states and discouraged federal prosecutors from pursuing related criminal cases in states where the drug was legal. This led to a number of states passing legalization laws.

The Trump Administration [reversed the Obama policy](#) in January 2018, allowing federal prosecutors to pursue offenders where federal and state laws conflict.



This ping pong effect extends to Congress, where depending on majority rule, cannabis-related actions and measures fluctuate. For example, a [February 2019 hearing](#) kicked off Congressional Democrat plans for sweeping changes to federal marijuana laws. Such actions have been blocked for the last few years by a Republican-controlled House.

THE RESOLUTION

The policy swings related to the marijuana debate are maddening and complicated for state attorneys, particularly in states where legalization laws are in place. One swift action from a federal administration, such as the 2018 Trump policy reversal, could jeopardize million-dollar state industries and bring on federal prosecution. State attorneys must be prepared to counsel offenders and address federal charges while wrestling with their own deep conflict of sworn allegiance to federal laws.

Even in those states contemplating passing legalization measures, legal advisors must be apprised of the most recent federal policy, Congressional action, and state bar opinions and rules to properly counsel companies, patients, growers and others. And within the issue are sub-debates: recreational vs. medicinal; oils, pills or smoked forms; and others.

No clear resolution to the great cannabis debate is in sight, although public opinion, including the medical community, has shifted in favor of reforming federal marijuana laws. Supporters on both sides of the debate agree that the current situation is not ideal or sustainable. Whether the

initiative to reclassify marijuana and change the federal ban comes from Congress or executive action is not known. For now, the interplay of state and federal laws and policies has allowed state attorneys some latitude in decision making. State attorneys can justify a position by citing an oath to support their state constitution or the federal constitution, depending on the need. And until the debate is settled, attorneys must remain close to the issue and the rule of law.



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