

**CANADA SHOWS THE UNITED STATES HOW TO DO MARIJUANA  
AT THE FEDERAL LEVEL: A COMPARISON AND SUGGESTION FOR  
A FEDERAL MEDICAL MARIJUANA LAW**

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## I. INTRODUCTION

### A. Thesis

One of the great features of the government in the United States is the division of power between state governments and the central federal government. Each state retains some individual sovereignty, sharing power with the federal government. This balance, however, can often lead to conflicts between the states and the federal government, especially when state policies contradict federal law. Perhaps the greatest and most well-known example of this in recent years is the topic of marijuana. Marijuana is an illegal substance under federal law.<sup>2</sup> However, more than half of the states in the US have either passed laws, or have proposed legislation, that legalizes marijuana for either medical use or recreational use.<sup>3</sup> That legislation, regardless of whether for medicinal or recreational use of marijuana, goes directly against federal law.

Proponents of uniformity between state and federal laws would say that this conflict causes serious problems because citizens of those states that have legalized marijuana do not know how to act.<sup>4</sup> On the one hand, their actions are legal in their state, but their actions would also be illegal in that very same state under federal law. So, what can the citizens do? What should federal officers do? It puts both parties in a very difficult situation.

This conflict, however, can have a positive effect in the long run by way of experimentation. The fact that there are fifty states and one sovereign district in this nation actually allows for great diversity and experimentation among the states on a wide range of topics, not just marijuana. These experiments among the states allow those at the federal level to watch, observe, and learn what is the best course of action on many important issues. Perhaps the first and best example of this is our very own Constitution. Indeed, much of the language found in the US Constitution was copied, word-for-word, from state constitutions then in existence. Even when not copied word-for-word, there are many things incorporated into the US Constitution that were direct principles or learning lessons from the different

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<sup>2</sup> See 21 U.S.C. § 812 (2018) (listing marijuana as a schedule I drug which, according to the same statute, means: (1) the drug has “a high potential for abuse,” (2) the drug has no accepted medical use in the United States, and (3) a lack of accepted safety under medical supervision).

<sup>3</sup> *Marijuana Overview*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 17, 2019), <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx> (explaining that, as of October 2018, 25 states and the District of Columbia had decriminalized small amounts of marijuana, and an additional 16 states introduced legislation, which ultimately failed, that would do the same).

<sup>4</sup> JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 174-78 (Oxford Univ. Press 2018) (lamenting that many state courts default to federal interpretations of clauses in their state constitutions that cover a similar area of law as a clause in the federal constitution, even when the language differs).

states. That begs the question: What have we learned from the states who have passed legislation that legalizes marijuana?

Some sociologists would point to the growing number of states that have passed legislation to legalize marijuana as proof that the recent American attitude towards the legalization of marijuana continues to move in a direction that favors its legalization.<sup>5</sup> In 1990, some studies found that only 16.4% of Americans supported the legalization of marijuana in the US.<sup>6</sup> Recent studies are now showing that the percentage has climbed to over sixty percent.<sup>7</sup> Many scholarly fields have attempted to explain this trend, but there has been no general consensus as to why more Americans are moving in favor of legalizing marijuana.<sup>8</sup> The legal field is not immune to this trend; with states like Colorado, California, Arizona, and many others passing legislation and even amending state constitutions to give legal rights to citizens of that state for the use of marijuana.<sup>9</sup> Even more recently, legislation has been proposed in the Congress of the United States that would decriminalize marijuana at the federal level.<sup>10</sup>

To better understand the legal significance and to converse fully about marijuana and why it should or should not be legalized medicinally or recreationally at a federal level in the US, it is crucial to have a full understanding of the plant, its different forms, uses, and effects, as well as the history of cannabis prohibition in the US.

This Note will give a background of marijuana; it will review what has happened with marijuana in California, Colorado, and Arizona; it will review how Canada, with its federal-provincial system of government, similar to the federal-state system of government in the US, has treated marijuana; and lastly, it will review current legislation and give a suggestion for what the American federal government should do about marijuana.

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<sup>5</sup> Amy Adamczyk et al., *Why do so many Americans now support legalizing marijuana?*, THE CONVERSATION (Feb. 5, 2019, 6:39 AM), <https://theconversation.com/why-do-so-many-americans-now-support-legalizing-marijuana-110593>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see also Cari Nierenberg, *Marijuana's Popularity Among US Adults Continues to Grow. Here's Why*, LIVE SCIENCE (Aug. 10, 2017), <https://www.livescience.com/60094-marijuana-popularity.html> (explaining the four top reasons adults self-reported using marijuana according to separate polls).

<sup>9</sup> *Marijuana Overview*, *supra* note 3; see also Ryan Randazzo, *Arizona voters approve Proposition 207, making recreational marijuana legal in state*, AZCENTRAL (Nov. 9, 2020), <https://www.azcentral.com/story/news/politics/elections/2020/11/03/arizona-marijuana-proposition-207-election-results/5997553002/>.

<sup>10</sup> The MORE Act, S. 2227, 116th Cong. (2019).

## **B. The Marijuana Plant and Its Forms**

Marijuana is known by many different names: weed, Mary Jane, herb, pot, grass, hemp, and bud, just to name a few.<sup>11</sup> Its plant name is *Cannabis Sativa*, but this is often shortened to simply Cannabis.<sup>12</sup> Marijuana can be introduced into the body in several forms.<sup>13</sup> These include rolled cigarettes (sometimes called joints), in pipes, water pipes (sometimes called bong), vaporizers, mixed in with foods (brownies, cookies, candies, and teas), and in cigars (sometimes called blunts).<sup>14</sup> Marijuana can also be altered to form a resin, which has a stronger psychoactive effect on the brain.<sup>15</sup> These resin forms come from the female part of the plant, and when they do, they take on the Spanish-coined term *Sinsemilla*, which literally means “without seed” (referring to the male seed of the marijuana plant).<sup>16</sup> Common marijuana resins are hash oil, waxy bud, and shatter.<sup>17</sup> The main psychoactive component of all marijuana, no matter the form, is delta-9-tetrahydrocannabinol (THC), but there are actually many psychoactive components found in marijuana that are similar to THC, or in other words, have similar effects on the brain.<sup>18</sup> These are called cannabinoids.<sup>19</sup>

Another popular cannabinoid that has received a lot of attention for its potential therapeutic use is cannabidiol, or CBD.<sup>20</sup> CBD, however, does not have any psychoactive effects, and in fact, some research even suggests that it counteracts the psychoactive effects of THC.<sup>21</sup> Despite their differences, both are still considered illegal in states that have not legalized marijuana. One alarming fact is that, as the marijuana industry has developed, the marijuana that is being produced recently has a more concentrated THC content on the one hand, and less

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<sup>11</sup> *Marijuana*, NAT’L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/drug-topics/marijuana> (last visited Nov. 9, 2020); see also ROBERT DEITCH, *HEMP: AMERICAN HISTORY REVISITED: THE PLANT WITH A DIVIDED HISTORY* 3 (Algora Publishing 2003).

<sup>12</sup> *Drug Facts: Marijuana*, NAT’L INST. ON DRUG ABUSE 1 (Dec. 2019), <https://www.drugabuse.gov/sites/default/files/drugfacts-marijuana.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2.

<sup>16</sup> MARIJUANA AND MADNESS 51 (David Castle, Deepak Cyril D’Souza, & Robin M. Murray eds., 2d ed. 2012).

<sup>17</sup> *Drug Facts: Marijuana*, *supra* note 12, at 2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> See generally MARIJUANA AND MADNESS, *supra* note 16.

<sup>20</sup> *Toward the Legalization, Regulation and Restriction of Access to Marijuana*, GOVERNMENT OF CANADA 4 (June 30, 2016), <https://www.canada.ca/content/dam/hc-sc/healthy-canadians/migration/health-system-systeme-sante/consultations/legalization-marijuana-legalisation/alt/legalization-marijuana-legalisation-eng.pdf>.

<sup>21</sup> *Id.*; see also O. Devinsky et al., *Cannabidiol: Pharmacology and potential therapeutic role in epilepsy and other neuropsychiatric disorders*, 55 *EPILEPSIA* 791, 793 (2014).

concentrated CBD content on the other hand, than it did even a few years ago.<sup>22</sup> This appears to be a move right out of the playbook of the tobacco industry from back in the 1980s and 1990s.<sup>23</sup> This means that marijuana manufacturers and growers are getting better and better at making marijuana's psychoactive effect that much stronger without anything to counteract that effect.<sup>24</sup>

Another fact to remember is that, although traces of marijuana may stay in a person's system for days or even weeks, the amount of time that THC affects the brain depends on how it was consumed.<sup>25</sup> If a person ingests marijuana through a smoking apparatus, whether that be a bong, cigar, or cigarette, the effect is almost immediate and lasts somewhere between one and three hours.<sup>26</sup> Alternatively, if that same person consumes marijuana through food, the effects of THC may last for many hours, yet it may take between twenty minutes and an hour after ingesting the marijuana for the person to start manifesting the effects of the THC.<sup>27</sup>

Lastly, and perhaps most importantly, is the fact that the potency of marijuana depends on the amount of THC present; the greater the concentration of THC in the marijuana, the stronger the psychoactive effect.<sup>28</sup> However, there is also some research that finds that the more constantly and consistently a person ingests marijuana, the more of a tolerance they obtain to the psychoactive effects, and additionally, the longer THC is traceable in the blood.<sup>29</sup> Finally, marijuana is also similar to alcohol in that the same amount of THC can also affect people differently depending on their size.<sup>30</sup> With this brief background in place, it is now possible to turn to the history and development of marijuana in the United States.

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<sup>22</sup> Fidelia Cascini et al., *Increasing Delta-9-Tetrahydrocannabinol ( $\Delta$ -9-THC) Content in Herbal Cannabis Over Time: Systematic Review and Meta-Analysis*, 5 CURRENT DRUG ABUSE REVS. 32, 34 (2012) (providing a comprehensive review of studies from 1979 to 2009 finding that there has been a recent and consistent increase in THC content in cannabis).

<sup>23</sup> *Protecting Nonsmokers from Secondhand Marijuana Smoke*, AM. NONSMOKERS' RTS. FOUND. 1 (2019), <https://no-smoke.org/wp-content/uploads/pdf/Protecting-Nonsmokers-from-Secondhand-Marijuana-Smoke.pdf>.

<sup>24</sup> Cascini, *supra* note 22; *see also* MARIJUANA AND MADNESS, *supra* note 16, at 35.

<sup>25</sup> *Marijuana*, *supra* note 11, at 6; *see also* Rebecca L. Hartman & Marilyn A. Huestis, *Cannabis Effects on Driving Skills*, 59 CLINICAL CHEMISTRY 478, 490 (2013) [hereinafter Hartman, *Cannabis and Driving*].

<sup>26</sup> *Marijuana*, *supra* note 11, at 9.

<sup>27</sup> *Id.*

<sup>28</sup> Hartman, *Cannabis and Driving*, *supra* note 25, at 488; *see also* Rebecca L. Hartman et al., *Cannabis effects on driving lateral control with and without alcohol*, 154 DRUG ALCOHOL DEPENDENCY 25, 32 (2015) [hereinafter Hartman, *Cannabis and alcohol*].

<sup>29</sup> Hartman, *Cannabis and Driving*, *supra* note 25, at 478.

<sup>30</sup> *Id.*; *see also* Hartman, *Cannabis and alcohol*, *supra* note 28.

## II. LEGAL BACKGROUND & HISTORY OF MARIJUANA

### A. Marijuana in the Early 1900s

Although there may be some evidence that marijuana use has been around for many centuries,<sup>31</sup> it is clear that marijuana was used consistently around the time of the colonialization of the Americas in the eighteenth century; for example, there is evidence it was used for making ropes, and even was a potential, but expensive, substitute for paper<sup>32</sup>

The criminalization of marijuana, on the other hand, started to appear on the modern radar with the Pure Food and Drug Act of 1906.<sup>33</sup> That Act required that certain “dangerous substances” be clearly marked on the label of any food or drug sold to the public that included such a substance.<sup>34</sup> One of those substances was cannabis.<sup>35</sup> It is unclear why cannabis was included on the list. Although it still flew under the radar to the general public for some time, perhaps its inclusion in the Act came because the federal government of US started having concerns about marijuana due to different reports from officials around the country.<sup>36</sup>

Some of these reports included accounts from locals in the Southwestern US of large numbers of immigrants from Mexico, who were reported as becoming violent and deviant when they used marijuana.<sup>37</sup> Because of these reports, marijuana would appear in legislation so as to be made illegal like cocaine or opiates, but most of this legislation failed to ever actually include marijuana.<sup>38</sup> Due to growing tension in the Southwest between the local law enforcement and the Mexican immigrants, leaders from the Federal Bureau of Narcotics (FBN) met with the US Treasury to try to come up with a federal tax for marijuana as a possible solution for deterring its use.<sup>39</sup> These discussions were based heavily in medicine, pharmacy, and scientific research, and ultimately led to The Marihuana Tax Act of 1937.<sup>40</sup>

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<sup>31</sup> ROBERT DEITCH, *HEMP: AMERICAN HISTORY REVISITED: THE PLANT WITH A DIVIDED HISTORY* 10 (Algora Publishing 2003) (citing to studies and findings that civilizations just coming out of the Stone Age were found to use hemp seeds in certain burial rituals).

<sup>32</sup> Allison McNearney, *The Complicated History of Cannabis in the US*, HISTORY.COM (Feb. 28, 2020 5:40 AM), <https://www.history.com/news/marijuana-criminalization-reefer-madness-history-flashback>.

<sup>33</sup> DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* 216 (Oxford Univ. Press, 3d. ed. 1999).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 219.

<sup>37</sup> *Id.* at 221.

<sup>38</sup> MUSTO, *supra* note 33, at 216.

<sup>39</sup> *Id.* at 225-26.

<sup>40</sup> *Id.* at 226, 228.

## **B. The Marihuana Tax Act of 1937**

There was a belief by civil rights groups at the time that this tax was enacted simply to attack the Mexican minorities, rather than out of any problems stemming from marijuana.<sup>41</sup> This is because Mexican immigrants in the Southwest were known for smoking marijuana and also for their then deviant behavior, which led local Americans and law enforcement personnel to believe there was a causal connection between the two.<sup>42</sup> Still, hemp fibers were being used and were a common crop in the United States,<sup>43</sup> which is why some marijuana historians believe that legislation at the time failed to include marijuana with other narcotics like cocaine.<sup>44</sup>

Regardless of the purpose of the Act, the tax worked simply: it put an occupational tax on those that dealt with marijuana.<sup>45</sup> More specifically, the Act required that “[e]very person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes administers or gives away marihuana” were not allowed to do so without paying an annual tax.<sup>46</sup> The amount paid in taxes differed depending on the prescribed use.<sup>47</sup> This was the first time that marijuana would have any sort of prohibition.

The principle purpose of the Act was to crack down on recreational use by preventing marijuana possession without documentation, showing that the tax was paid and for what purpose the marijuana was to be used.<sup>48</sup> However, the practical effects of the law led to decreased research, production, commercial use, and the first arrest for a violation of marijuana possession in, ironically, Denver, Colorado.<sup>49</sup> The Act would remain in force until a US Supreme Court decision deemed part of it unconstitutional.<sup>50</sup> It is unclear why, but the history of marijuana

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<sup>41</sup> *Id.* at 229.

<sup>42</sup> *Id.* at 219-20.

<sup>43</sup> *Did You Know. . . Marijuana Was Once A Legal Cross-Border Import*, U.S. CUSTOMS & BORDER PROT. (Oct. 11, 2019, 10:09 AM), <https://www.cbp.gov/about/history/did-you-know/marijuana> [hereinafter *Did You Know*].

<sup>44</sup> *Id.*

<sup>45</sup> The Marihuana Tax Act of 1937, Pub. L. No. 75-238, § 2(a), 50 Stat. 551.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Did You Know*, *supra* note 43; *see also* The Marihuana Tax Act of 1937, *supra* note 45.

<sup>49</sup> Matt Ferner, *Marijuana Prohibition Began With An Arrest In Denver, Ends Here With Long Lines and High Hopes*, HUFFPOST (Jan. 23, 2014), <https://www.huffpost.com/> (noting the irony because Colorado has been on the center stage of marijuana reform in the United States in the last decade).

<sup>50</sup> *Leary v. U.S.*, 395 U.S. 6 (1969) (holding that the registration requirements of the Marihuana Tax Act of 1937 violate the Fifth Amendment protection against self-incrimination because a person would be exposed to state and local law enforcement which have laws against Marijuana).

from a legal standpoint, with the exception of some minor changes in federal sentencing for narcotics, is relatively quiet until the “War on Drugs” was declared.<sup>51</sup>

### **C. Mandatory Sentencing and the War on Drugs**

In 1951, a big change happened when Congress passed an amendment to the Narcotic Drugs Import and Export Act (formerly 21 U.S.C. § 174) to create mandatory sentencing for narcotics-law violations.<sup>52</sup> The mandatory minimum sentence for a violation was two years.<sup>53</sup> By this point, more legislation had passed, some of which included marijuana as a narcotic drug.<sup>54</sup>

With this new power in place, the US cracked down hard on drugs, including marijuana related arrests.<sup>55</sup> However, the problem with drugs would only increase until the 1970s when President Richard Nixon gave his famous speech to Congress, declaring “war” on heroin and drug addiction.<sup>56</sup> This was all happening around the same time that the Controlled Substances Act was enacted, which placed substances in schedules depending on their dangerousness, addiction, and severity; and marijuana was in Schedule I—the most dangerous and highly regulated schedule.<sup>57</sup>

President Nixon continued to fight drugs in America, and Congress worked in tandem with these efforts. In 1973, soon after his speech to Congress declaring a “War on Drugs,” President Nixon consolidated all anti-drug forces under a single command, which created what we know as the Drug Enforcement Administration

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<sup>51</sup> *Did You Know*, *supra* note 43; *see also* MUSTO, *supra* note 33, at 230-31.

<sup>52</sup> H.R. Rep. No. 82-3490, at 767 (1951).

<sup>53</sup> *Id.*

<sup>54</sup> *See* 21 U.S.C. § 176a (repealed 1970) (imposing criminal punishment to those who “knowingly, with intent to defraud the United States, imports or brings into the United States marihuana contrary to law . . . or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such marihuana after being imported brought in, knowing the same to have been imported or brought into the United States contrary to law . . .”). Similar language can be found in the current criminal code against marijuana under 21 U.S.C. §§ 801 et seq.

<sup>55</sup> Paul P. Kennedy, *Nearly 500 Seized in Narcotics Raids Across the Nation; Arrests Here Pass 50 as U.S. Cracks Down on Peddlers Under Toughened Law Teen-Age Trade is Target Officials Hope to Cut Juvenile Addiction – Big Racketeers to Face Indictment Nearly 500 Seized in Narcotics Raids*, N.Y. TIMES, Jan. 5, 1952, at 1.

<sup>56</sup> *See* Richard Nixon, *Special Message to the Congress on Drug Abuse Prevention and Control* (June 17, 1971), THE AM. PRESIDENCY PROJECT (Oct. 11, 2019, 2:50 PM), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-drug-abuse-prevention-and-control>; *see also* Nixon Asks \$155 Million In Drug War, PALM BEACH POST, June 18, 1971, at A1, A6.

<sup>57</sup> *See generally* 21 U.S.C. §§ 801 et seq.



(DEA).<sup>58</sup> It started as only 2,000 special agents and a minimal budget, but soon grew to be a global force, attacking drug rings all over the world.<sup>59</sup>

When President Nixon gave his speech to Congress, drug arrests were close to 500,000.<sup>60</sup> By 2007, the number of drug arrests soared to the highest category of arrests in the United States—1.8 million for drug abuse violations.<sup>61</sup> From the time of President Nixon’s speech until the early 1980s, marijuana accounted for by far the largest number of arrests among all drug types reported at nearly 500,000.<sup>62</sup> Although heroin and cocaine would soon take over from the mid-1980s to the mid-1990s, marijuana took back the lead; and as of 2007 topped the chart, where it accounted for almost one million of the 1.8 million arrests for drug violations.<sup>63</sup>

Much more can be said about the War on Drugs and its history, but suffice it to say for the purpose of this Note, that the anti-drug efforts of the US federal government during this era created an American sentiment against drugs in general, but more particularly, against marijuana.

### III. LEGALIZATION OF MARIJUANA: A HOT TOPIC IN THE US

#### **A. California Passes Prop 215 to Legalize Medical Marijuana**

The push for changing the marijuana laws stemmed mostly from anecdotal evidence that marijuana could ease pain and nausea associated with certain illnesses, or in other words, marijuana had actual medical benefits.<sup>64</sup> However, more than anecdotal evidence was beginning to surface elsewhere, even in the courts, with a case out of Florida that allowed for a medical necessity defense against criminal liability for marijuana use.<sup>65</sup>

Mr. and Mrs. Jenks’s convictions were overturned for the cultivation and use of marijuana.<sup>66</sup> The Jenks both unintentionally contracted AIDS (Acquired Immunodeficiency Syndrome) and Mrs. Jenks especially declined rapidly in

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<sup>58</sup> “The Early Years” in *History*, DRUG ENFORCEMENT ADMINISTRATION (Feb. 3, 2020), <https://www.dea.gov/sites/default/files/2018-07/Early%20Years%20p%2012-29%20%281%29.pdf>.

<sup>59</sup> “The Early Years” and “1970-1975” in *History*, DRUG ENF’T ADMIN. (Feb. 3, 2020), [dea.gov/history](https://www.dea.gov/history).

<sup>60</sup> *Drugs and Crime Facts*, BUREAU OF JUST. STAT. (Oct. 11, 2019, 3:05 PM), <https://www.bjs.gov/content/DCF/enforce.cfm>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Richard Sandomir, *Dennis Peron, Early Medical Marijuana Advocate, Dies at 71*, N.Y. TIMES (Jan. 30, 2018), <https://www.nytimes.com/2018/01/30/obituaries/dennis-peron-early-medical-marijuana-advocate-dies-at-71.html>.

<sup>65</sup> *Jenks v. State*, 582 So. 2d 676, 677 (Fla. Dist. Ct. App. 1991).

<sup>66</sup> *Id.*

health.<sup>67</sup> A very influential fact in the case was that Mrs. Jenks's nausea was so bad that it was considered by her doctors to be killing her because none of her medications were working.<sup>68</sup> The reason the medications were not working is because some of her treatments caused her to vomit incessantly, which meant she was unable to digest some of the oral medications that she was taking.<sup>69</sup> The Jenks' physician testified that nothing else but Cannabis would help the nausea; that if he could prescribe Cannabis he would because if the nausea was not controlled, Mrs. Jenks would die from the disease.<sup>70</sup>

The appellate court of Florida, true to the black-letter law of necessity, held that a necessity defense works when a person is confronted with "a choice of two evils" and either has to keep the law, which produces a harmful result, or break the law for a less harmful result.<sup>71</sup> In such a situation, if that person chooses to break the law, they are justified in doing so.<sup>72</sup> According to the appellate court, the Jenks met their burden of proving necessity, and both were acquitted.<sup>73</sup>

These types of situations were at the crux of those pushing for the medical use of marijuana across the country in the early 1990s. Proposition 215 in California was no exception.<sup>74</sup> Put simply, Prop 215 was a voter initiative to decriminalize marijuana use for medical purposes.<sup>75</sup> This voter initiative legislation was created by a group of California citizens and marijuana advocacy groups.<sup>76</sup>

When put to a vote, the Proposition passed with resounding success; more than five million voters favored the Proposition, with a little over four million citizens voting against it (fifty-six percent to forty-four percent, respectively).<sup>77</sup> The Proposition exempted certain patients and defined caregivers from criminal liability for prescribed use and growth of marijuana for the medical treatment of

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<sup>67</sup> *Id.* at 677-79 (noting that, as part of the defense, the Jenks had to prove, inter alia, that neither one of them contracted AIDS intentionally in order for their defense to survive).

<sup>68</sup> *Id.* at 677.

<sup>69</sup> *Id.*

<sup>70</sup> *Jenks*, 582 So. 2d at 677-78.

<sup>71</sup> *Id.* at 678.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 680.

<sup>74</sup> Sandomir, *supra* note 64.

<sup>75</sup> *Statewide Initiative Guide*, CAL. SEC'Y OF STATE 2 (Feb. 3, 2020), elections.cdn.sos.ca.gov/ballot-measures/pdf/statewide-initiative-guide.pdf; *see also* CAL. HEALTH & SAFETY CODE § 11362.5(a) ("Added November 5, 1996, by initiative Proposition 215, Sec. 1.").

<sup>76</sup> *Statewide Initiative Guide*, *supra* note 75; *see also* *Wo/Men's Alliance for Medical Marijuana*, WEB ARCHIVE (Feb. 3, 2020), web.archive.org/web/20110429192251/http://wamm.org/ (explaining they were one of the original marijuana groups to advocate for medical marijuana and helped to write Prop 215 in California).

<sup>77</sup> *California Proposition 215, The Medical Marijuana Initiative (1996)*, BALLOTEDIA (Oct. 12, 2019, 2:19 PM), [https://ballotpedia.org/California\\_Proposition\\_215\\_the\\_Medical\\_Marijuana\\_Initiative\\_\(1996\)](https://ballotpedia.org/California_Proposition_215_the_Medical_Marijuana_Initiative_(1996)); *see also* Sandomir, *supra* note 64.

“any . . . illness for which marijuana provides relief.”<sup>78</sup> It would not be long before California, again, would take another radical step in the marijuana world—legalizing the recreational use of marijuana for all adult citizens of the state in 2016 through Proposition 64.<sup>79</sup> The new law allows adults aged twenty-one years or older to have or purchase up to 28.5g of marijuana (not concentrated cannabis (resin)), or up to eight grams of concentrated cannabis.<sup>80</sup> The new law also allows for adults aged twenty-one years or older to grow up to six marijuana plants per residence.<sup>81</sup>

## **B. Colorado Amends State Constitution to Legalize Medical Marijuana**

Although other states quickly followed California’s lead by legalizing the medical use of marijuana through statute, Colorado took it one step further by amending its state constitution in 2000, making it a constitutional right of access for the medical use of marijuana for Colorado citizens.<sup>82</sup> Amendment 20 to the Colorado Constitution was similar to California’s Prop 215, but it was actually narrower from a legal view than Prop 215.<sup>83</sup> The new amendment allowed for the medical use of marijuana for certain prescribed diseases and symptoms, or those which were approved by a state agency, which means that if a person wanted medical marijuana, but fell outside the explicit diseases or symptoms, a state agency would have to approve it.<sup>84</sup> Because marijuana was still a Schedule I drug under federal law at the time, and still is today, the only way Colorado citizens could obtain marijuana for medical use was to obtain seeds and grow the plant themselves; even then, it could only be obtained at qualified marijuana shops, or what are more commonly known as marijuana dispensaries.<sup>85</sup> In fact, before marijuana was legalized for recreational use in Colorado, the Colorado Department of Health and Environment warned its citizens applying for a registration card for medical marijuana that the card provided no protection to citizens in possession of a card

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<sup>78</sup> See CAL. HEALTH & SAFETY CODE § 11362.5 (amending California’s Health & Safety Code to include Proposition 215).

<sup>79</sup> See *id.* § 11362.1(a)(1).

<sup>80</sup> *Id.* § 11362.1(a)(1)-(2)d.

<sup>81</sup> *Id.* § 11362.1(a)(3).

<sup>82</sup> *Historical Timeline, History of Marijuana as Medicine*, PROCON (last updated Sept. 24, 2019), <https://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026#1990-1999>.

<sup>83</sup> Cf. COLO. CONST. art. 18, § 14(1)(a)(I)-(III) with CAL. HEALTH & SAFETY CODE § 11362.5 (Deering 2020).

<sup>84</sup> COLO. CONST. art. 18, § 14(1)(a)(I)-(III).

<sup>85</sup> *Medical Marijuana Registry Frequently Asked Questions*, COLO. DEP’T OF PUB. HEALTH & ENV’T (May 21, 2009), <https://web.archive.org/web/20090521024226/http://www.cdph.state.co.us/hs/medicalmarijuana/fullpacket.pdf>.

under federal law.<sup>86</sup> Clearly Colorado understood that it was sticking its nose up to the federal government, but like many other states, continued to do so anyway.

As alluded to previously, it would only take Colorado twelve more years before it too amended its laws to legalize the recreational use of marijuana, and again, it would be added as a constitutional right.<sup>87</sup> Under the Colorado Constitution, adults can possess up to one ounce (or roughly twenty-eight grams) of marijuana, although it is silent on whether that amount can be concentrated or not.<sup>88</sup> Like California, adults can also cultivate their own marijuana plants: up to six, with only three allowed to be budding at a time.<sup>89</sup>

It may come as a surprise to some that, although the Colorado citizens and legislature have moved marijuana reform along rather quickly, the Colorado courts have been a little more reluctant to jump on board.<sup>90</sup> In *Coats v. Dish Network, LLC*, the plaintiff, Brandon Coats, sued his former employer claiming that he was wrongfully terminated because of his lawful use of medical marijuana.<sup>91</sup> Mr. Coats was a quadriplegic who applied for and received a medical marijuana card for his painful muscle spasms, which were caused by his condition.<sup>92</sup> He used marijuana at home and work in accordance with Colorado state law.<sup>93</sup> During a random company drug test, Mr. Coats tested positive for THC, the psychoactive component of marijuana.<sup>94</sup> He was soon fired for violating the company drug policy.<sup>95</sup> Under Colorado law, it is unlawful for an employer to terminate an employee for lawful, out-of-work activities.<sup>96</sup> It was under this law that Mr. Coats sued his former employer.<sup>97</sup> The case eventually made its way up to the Colorado Supreme Court, which held that the term “lawful” does not only apply to Colorado law, but to federal law as well, thus making the employer’s actions lawful because marijuana was still unlawful under federal law.<sup>98</sup>

This does not mean that the Colorado courts are ready to abandon their citizens altogether in the face of federal law.<sup>99</sup> In *People v. Gadberry*, the defendant, Ms.

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<sup>86</sup> *Id.*; see also *Federal Implications*, COLORADO MARIJUANA <https://www.colorado.gov/pacific/marijuana/federal-implications> (last visited Oct. 12, 2019) (advising Colorado citizens who are seeking federal employment, federal financial aid, firearms, federally subsidized housing, and those seeking to go onto federal lands to avoid marijuana use by reason of criminal liability for possession and use of marijuana under federal law).

<sup>87</sup> COLO. CONST. art. 18, § 16.

<sup>88</sup> *Id.* § 16(3)(a)-(c).

<sup>89</sup> *Id.* § 16(3)(b).

<sup>90</sup> *Coats v. Dish Network, LLC*, 350 P.3d 849 (Colo. 2015).

<sup>91</sup> *Id.* at 850 ¶ 2.

<sup>92</sup> *Id.* at 850 ¶ 5.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 850 ¶ 6.

<sup>95</sup> *Coats*, 350 P.3d at 851 ¶ 6.

<sup>96</sup> *Id.* at 851 ¶ 7.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 850 ¶ 4.

<sup>99</sup> *People v. Gadberry*, 440 P.3d 449 (Colo. 2019).

Amanda Adberry, was pulled over by Colorado State Police Officers because the car was missing its front license plate.<sup>100</sup> The officer who made the stop was accompanied by another officer who was a dog handler for the police department and who happened to have the drug-sniffing dog named Talu along for the patrol.<sup>101</sup> The dog was trained to alert the police handler if it smelled certain substances, one of which was marijuana.<sup>102</sup> While waiting for the plates to be checked, the handler took the dog around the car, and the dog alerted the trainer to the passenger side door.<sup>103</sup> Normally a dog sniff that alerts a handler to the presence of illegal drugs gives officers probable cause to search the property,<sup>104</sup> and the police handler did so, finding methamphetamine in Ms. Gadberry's wallet.<sup>105</sup> However, the Colorado Supreme Court held, among other things, that because the dog was trained to alert to both legal and illegal substances, the sniff was suspect, leaving the officers' probable cause to search the car wanting, and therefore, in violation of Ms. Gadberry's Fourth Amendment protections.<sup>106</sup>

Comparing these two cases side-by-side shows the difficulty and confusion that can happen and will continue to happen among both law enforcement and citizens of the United States if federal law and state law continue to conflict about what to do with marijuana.

### **C. Arizona Passes Proposition 203 to Legalize Medical Marijuana**

Arizona's road to the legal, medical use of marijuana has been bumpy. The legalization of medical marijuana first came about in 1996, when voters approved Proposition 200, which was also a voter initiative, with a ratio of nearly two-to-one in favor of the proposition.<sup>107</sup> Prop 200 was known as The Drug Medicalization, Prevention and Control Act of 1996.<sup>108</sup> The legalization quickly ran into problems when the state legislature enacted a bill that delayed the voter-initiated and voter-

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<sup>100</sup> *Id.* at 451 ¶ 3.

<sup>101</sup> *Id.* at 451 ¶ 4.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 451 ¶ 5.

<sup>104</sup> *See Florida v. Harris*, 568 U.S. 237, 240, 246-47 (2013) (holding that a dog sniff, if conducted by a trained dog to sniff for illegal narcotics, amounts to probable cause for police officers to conduct a search).

<sup>105</sup> *Gadberry*, 440 P.3d at 451 ¶ 5.

<sup>106</sup> *Id.* at 452-53 ¶¶ 13-20; *see also* *People v. McKnight*, 446 P.3d 397, 400 ¶¶ 7-14 (Colo. 2019).

<sup>107</sup> *Arizona Bill Delays Medical Marijuana Use*, L.A. TIMES (Apr. 16, 1997, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1997-04-16-mn-49181-story.html>; *see also Drug Reform Measures Signed Into Law in Arizona*, NAT'L ORG. FOR THE REFORM OF MARIJUANA L. (NORML), Dec. 9, 1996.

<sup>108</sup> *1996 Ballot Propositions*, Arizona Sec'y of State's Off., <https://apps.azsos.gov/election/1996/General/1996BallotPropsText.htm> (last visited Nov. 6, 2019).

approved proposition until the state received federal approval.<sup>109</sup> Obviously, federal approval was never given, thus rendering the 1996 voter initiative effectively null.<sup>110</sup> This outraged the Arizona citizens, and in 1998, Arizona citizens put up another voter-initiated proposition, Prop 105, to amend the Arizona constitution.<sup>111</sup> This amendment made it so that if a voter initiative was passed by a majority of votes the Arizona legislature could not repeal the law, and more so, if the legislature wants to change that law, they could not do so, unless the change: (1) furthers the interest of the law; and (2) is approved by three-fourths of both houses of the Arizona legislature.<sup>112</sup>

The battle did not stop there, and in 2002, Proposition 203 was introduced, again to legalize the medical use of marijuana.<sup>113</sup> Prop 203 was going to build upon the essentially nullified Drug Medicalization, Prevention and Control Act of 1996 with some slight changes in funding and sentencing, as well as to clarify and correct some incorrect interpretations of courts, attorneys, and the federal government.<sup>114</sup> However, Prop 203, unlike the earlier Prop 200, did not even come close to receiving enough votes for approval, with only 42.7% of voters casting in favor of Prop 203.<sup>115</sup>

It was not until 2010 that Arizona citizens, who were in favor of medical marijuana, sought to legalize it again but this time they succeeded; medical marijuana was barely given an approving vote, with only 50.1% of the Arizona voters.<sup>116</sup> The Arizona Medical Marijuana Act (AMMA) allows for a “qualifying patient,” meaning that the person has one of the enumerated “debilitating medical condition[s],” to possess 2.5 ounces (or approximately seventy-one grams) of usable marijuana, and up to twelve marijuana plants that are being cultivated in a “closed, locked facility” without criminal penalties.<sup>117</sup> The only exception to the

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<sup>109</sup> *Arizona Bill Delays Medical Marijuana Use*, *supra* note 107.

<sup>110</sup> *Id.*

<sup>111</sup> ARIZ. CONST. art. IV, pt. 1, § 1(6)(B)-(C).

<sup>112</sup> *Id.*

<sup>113</sup> *Drug Medicalization, Prevention and Control Act of 2002*, NAT’L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/elections-and-campaigns/ballot-measures-database.aspx> (select “Arizona” from States; select “2002” from Year; and search for “Drug Medicalization, Prevention and Control Act of 2002” in search bar).

<sup>114</sup> *Proposition 203*, ARIZ. SEC’Y OF STATE’S OFF. 118-19, <https://apps.azsos.gov/election/2002/Info/pubpamphlet/english/prop203.pdf> (Nov. 6, 2019, 12:46 PM).

<sup>115</sup> *Drug Medicalization*, *supra* note 113; *see also 2002 General Election (Unofficial Results) Proposition 203*, ARIZ. SEC’Y OF STATE’S OFF., <https://apps.azsos.gov/results/2002/general/BM203.htm> (last updated Nov. 14, 2002, 9:40 AM).

<sup>116</sup> *Medical Marijuana*, National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/ballot-measures-database.aspx> (Nov. 6, 2019, 12:50 PM) (“barely” because Proposition 203 of 2010 was approved by 50.1% of the voters).

<sup>117</sup> ARIZ. REV. STAT. ANN. § 36-2801(1) (2019).

closed, locked facility requirement is when the person is moving.<sup>118</sup> It should be noted that Arizona recently voted in 2020 to legalize recreational marijuana use, with almost sixty percent in favor of the proposition.<sup>119</sup>

Interesting to note is the fact that Colorado, despite being known for broad legalization of marijuana, is still more restrictive in one sense than Arizona's medical marijuana scheme: the average citizen is restricted to only having three of its plants budding at one time, whereas Arizona's scheme is silent on whether or not the plants can be budding.<sup>120</sup> This means that an Arizona citizen could theoretically have twelve budding plants, compared to the Colorado citizens having three.<sup>121</sup> However, Arizona restricts the access to only those qualified patients, whereas any adult over twenty has access to the plants, which, in that sense, makes it more broad than Arizona's laws.<sup>122</sup>

The list of diseases for Arizona's Medical Marijuana Act is exclusive, but the AMMA allows for the Arizona Department of Health Services to make rules that would allow the public to petition to have other diseases or conditions added to the list of approved debilitating medical conditions.<sup>123</sup> Arizona's Medical Marijuana Act, compared to the medical marijuana scheme of Colorado and other states, is very similar in that it has a registration database; it permits users to have a limited, usable amount, and it permits the user to grow their own marijuana plants.<sup>124</sup>

Arizona's Supreme Court, like Colorado's high court, has already been called on to decide legal issues dealing with the medical use of marijuana and Arizona's Medical Marijuana Act.<sup>125</sup> In the recently decided case of *State v. Jones*, the defendant, Rodney Jones, was arrested for possessing hashish, which is a resin or a concentrated form of cannabis.<sup>126</sup> Although Mr. Jones had a medical marijuana card, both the trial and appellate courts upheld Mr. Jones' guilty verdict, reasoning that the Medical Marijuana Act allows for possession of marijuana, not its resins.<sup>127</sup>

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<sup>118</sup> *Id.*

<sup>119</sup> 2020 General Election, AZ SEC'Y OF STATE (Nov. 9, 2020), <https://results.arizona.vote/#/featured/18/0> [hereinafter 2020 General Election]; see also Randazzo, *supra* note 9.

<sup>120</sup> Compare 2020 General Election, *supra* note 119, with COLO. CONST. art. XVIII § 16(3)(b)."

<sup>121</sup> Compare A.R.S. § 36-2801(1), with COLO. CONST. art. 18 § 16(3)(b).

<sup>122</sup> Compare A.R.S. § 36-2801(1), with COLO. CONST. art. 18 § 16(2)(b).

<sup>123</sup> A.R.S. § 36-2801.1 ("The public may petition the department [of health services] to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in [A.R.S.] § 36-2801"); see also A.R.S. § 36-2803(A) ("Not later than one hundred twenty days after the effective date of this chapter, the department [of health services] shall adopt rules: (1) [g]overning the manner in which the department considers petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in [A.R.S.] § 36-2801 . . .").

<sup>124</sup> Cf. A.R.S. §§ 36-2801 et al., with Colo. Const. Art. 18 § 16.

<sup>125</sup> See, e.g., *State v. Jones*, 440 P.3d 1139, 1142 (Ariz. 2019).

<sup>126</sup> *Id.* at 1141.

<sup>127</sup> *Id.*

Their reasoning stemmed from a part of the AMMA that states that it is not displacing the Arizona Criminal Code's distinctions of marijuana and cannabis, the former being the only thing protected by the AMMA.<sup>128</sup> The Arizona Supreme Court reversed, holding that the statute includes the manufacturing of all parts of the plant, which would necessarily include resins derived from the marijuana plant.<sup>129</sup> The Court vacated Mr. Jones' convictions and sentences.<sup>130</sup>

The Arizona Supreme Court's decision implies that the qualified patient can possess marijuana in any form, assuming that it only comes from the marijuana plant, and as long as that form is less than the statutorily authorized amount of 2.5oz of dried marijuana leaves.<sup>131</sup> This, however, creates a huge difficulty—if not an impossibility—for law enforcement to enforce the statutory amount due to the fact that resins, by their very design, are made to be more concentrated than a dry leaf form, which means it would take scientific testing to derive how many ounces of dried marijuana plants made up any particular hashish.<sup>132</sup> Obviously, law enforcement officials do not want to go around arresting every person who has hashish to test for its corresponding, dry-leaf amount because that would be totally impractical. However, that means—at least in Arizona—those with hashish and other resins can likely get away with amounts of marijuana well over the statutory limits of the AMMA. Once again, this court case shows the difficulty in enforcing even the medical marijuana laws as they now exist.

#### IV. CANADA & MARIJUANA: AN INTERNATIONAL COMPARISON

##### A. Legal Background and History of Marijuana in Canada

Like drug control in the US, drug control in Canada began early in the twentieth century, but Canada's prohibition of marijuana actually began earlier than that of the United States.<sup>133</sup> It is also unclear why marijuana was included with Canada's other illegal drugs like cocaine and morphine; the Minister of Health only commented that “[t]here is a new drug in the schedule.”<sup>134</sup> Some historians speculate that the Prime Minister of Canada at the time, Mackenzie King, who was

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<sup>128</sup> *Id.* at 1141 ¶ 3.

<sup>129</sup> *Id.* at 1142 ¶ 7.

<sup>130</sup> *Jones*, 440 P.3d at 1144 ¶ 19.

<sup>131</sup> *See generally id.*

<sup>132</sup> *See generally The Complete Guide to Hashish*, SHAFFER LIBR. OF DRUG POL'Y, [http://druglibrary.org/MedicalMj/hash/how\\_to\\_make\\_hash.htm](http://druglibrary.org/MedicalMj/hash/how_to_make_hash.htm) (last visited Nov. 6, 2019, 2:23 PM).

<sup>133</sup> Daniel Schwartz, *Marijuana was criminalized in 1923, but why?*, CBC NEWS, <https://www.cbc.ca/news/health/marijuana-was-criminalized-in-1923-but-why-1.2630436> (last updated May 6, 2014); *see also* PIERRE CLAUDE NOLIN & COLIN KENNY, CANNABIS: OUR POSITION FOR A CANADIAN PUBLIC POLICY (Sept. 2002), <https://sencanada.ca/content/sen/committee/371/ille/rep/repfinalvol2-e.pdf>.

<sup>134</sup> NOLIN & KENNY, *supra* note 133, at 256.



a strong advocate for prohibition during a social era of prohibition, may have advocated for the inclusion of marijuana, but there has not been historical evidence to substantiate that explanation.<sup>135</sup> Therefore, it remains a historical mystery as to why marijuana was included in Canada's narcotics act, and even more puzzling still that it would happen around the same time that the United States mysteriously prohibited marijuana.

Also similar to the United States, marijuana activity was relatively quiet in Canada until the 1960s, with only twenty-five arrests documented between 1930 and 1946 by the Royal Canadian Mounted Police (RCMP).<sup>136</sup> Once the 1960s came around, the social influence of hippies and anarchism from the United States had made its way up to Canada; leading to a boom of marijuana-related arrests, comparatively, with 2,300 arrests in the late 1960s, and up to 12,000 arrests in the early 1970s.<sup>137</sup>

One particular event worth mentioning that exemplifies the public negativity towards marijuana is the 1971 Gastown Riot.<sup>138</sup> This event mainly started as an effort to protest some of the drug laws and drug raids that were happening in the Vancouver area of the province of British Columbia by "smok[ing] in."<sup>139</sup> Many of the protestors who showed up were described as "hippies," and many were, naturally, smoking pot.<sup>140</sup> The protest eventually turned violent when police erroneously received word that some of the protestors broke some store front windows.<sup>141</sup> At this point, police started to show up in riot gear, and the senior police officer of the time ordered that the crowd had to be cleared.<sup>142</sup> However, the crowd did not disperse and violence ensued by both the police and the protestors leading to seventy-nine people being arrested, many more injured, and a confused city thinking that marijuana had caused a violent outbreak.<sup>143</sup>

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<sup>135</sup> Schwartz, *supra* note 133.

<sup>136</sup> NOLIN & KENNY, *supra* note 133, at 59.

<sup>137</sup> *Id.*; see also Leah Spicer, *Historical and Cultural Uses of Cannabis and the Canadian "Marijuana Clash"*, Special Senate Committee on Illegal Drugs (Apr. 12, 2002), <https://sencanada.ca/content/sen/committee/371/ille/library/spicer-e.htm#B>.

<sup>138</sup> *1971 Gastown Riot*, CANADA'S HUM. RTS. HIST., <https://historyofrights.ca/encyclopaedia/main-events/1971-gastown-riot/> (last visited Nov. 13, 2019, 2:02 PM).

<sup>139</sup> *Id.*; see also Spicer, *supra* note 137.

<sup>140</sup> *1971 Gastown Riot*, *supra* note 138.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* (discussing that many of the locals demanded an internal investigation, thinking that this event was some sort of animosity from the police against young people. However, as time went on and the results of the investigation from a disinterested third-party came out, the papers started to claim that the riot was started by two "yippies" who were using "marijuana laws as a means of gathering a crowd for a confrontation for police."); see also generally DEBATING DISSENT: CANADA AND THE 1960S (Lara Campbell et al. eds., University of Toronto Press 2012); and DOMINIQUE CLÉMENT, CANADA'S RIGHTS REVOLUTION: SOCIAL MOVEMENTS AND SOCIAL CHANGE, 1937-82 (UBC Press 2008).

It was also around this same time that a commission was formed in Canada, the Le Dain Commission, to further investigate marijuana and its effects.<sup>144</sup> Interestingly enough, the research and report, authored by a medical doctor, suggested that the criminal laws for simple possession of marijuana should be removed because they created problems and difficulties for law enforcement and clogged the courts.<sup>145</sup> However, despite the Le Dain Commission's recommendations that the criminal law not be used to punish simple possession users of drugs including marijuana, no action was taken to decriminalize it.<sup>146</sup> Moreover, marijuana and its criminal treatment would continue to receive attention throughout the 1970s as drug use among youth continued to steadily rise.<sup>147</sup>

Although the United States was in a "war" against drugs, many strict prohibition measures in Canada kept drug use relatively stable throughout the 1980s.<sup>148</sup> It was not until the 1990s that marijuana use really exploded in Canada, with statistics showing that marijuana usage almost doubled across the nation among most age groups.<sup>149</sup>

## **B. Case out of Ontario Turns the Tables on Marijuana**

The change in perspective towards marijuana and its potential may have started the same way in Canada as it did in the United States: through a court case thrust into the spotlight. Canada's strict laws against marijuana led to the arrest of Mr. Terrance Parker.<sup>150</sup> Parker had suffered a brain injury when he was only four years old, which led to dangerous epileptic seizures, despite heavy medication use to prevent them.<sup>151</sup> Parker underwent a couple of surgeries and many hospital visits to deal with the epilepsy with repeated failure and no improvement.<sup>152</sup> After the second failed brain surgery, Parker started smoking marijuana and his doctor noticed a decline in his episodes of epileptic seizures.<sup>153</sup> Despite this finding,

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<sup>144</sup> Spicer, *supra* note 137; see also J.S. Bennett, *Le Dain Commission of Inquiry into the Non-Medical Use of Drugs Tables Fourth and Final Report*, 110 CAN. MED. ASSOC. J. 105 (1974).

<sup>145</sup> Bennett, *supra* note 144, at 107.

<sup>146</sup> Spicer, *supra* note 137.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *R. v. Parker*, [2000] 49 O.R. (3d) 481 (Can. Ont. C.A.); *Canada's marijuana laws declared unconstitutional* (CBC Television Broadcast on THE NATIONAL, Peter Mansbridge, Host; Eric Sorenson, Reporter; on July 31, 2000), <https://www.cbc.ca/archives/entry/canadas-marijuana-laws-declared-unconstitutional>.

<sup>151</sup> *Parker*, 49 O.R. (3d) 481; *Canada's marijuana laws declared unconstitutional*, *supra* note 150; see also Spicer, *supra* note 137.

<sup>152</sup> *Parker*, 49 O.R. (3d) 481; *Canada's marijuana laws declared unconstitutional*, *supra* note 150.

<sup>153</sup> *Parker*, 49 O.R. (3d) 481; *Canada's marijuana laws declared unconstitutional*, *supra* note 150.

Parker was arrested in 1996 for possession and cultivation of marijuana in Ontario.<sup>154</sup> Similar to the Jenkes' arguments in Florida, Mr. Parker argued that his cultivation and use of marijuana was a medical necessity, and furthermore, challenged the constitutionality of Canada's Narcotic Control Act (NCA) and Canada's Controlled Drugs and Substances Act (CDSA), arguing that those laws forced him to engage in criminal activity in order to keep his health.<sup>155</sup> The trial judge accepted his argument and stayed the criminal proceedings against Mr. Parker, and the Ontario Court of Appeals affirmed.<sup>156</sup> Additionally, the Court of Appeals took marijuana reform one step further by not only dropping the charges against Mr. Parker, but it also found the marijuana laws unconstitutional, and gave the legislature one year to amend the laws, otherwise there would be "no law on the books for marijuana."<sup>157</sup> The case prompted the Canadian federal government to reevaluate its laws on marijuana and further contemplate a medical marijuana law.<sup>158</sup>

### **C. Canada Passes A Medical Marijuana Law**

Similar to many individual states in the United States, and in contrast to the United States' federal government, Canada passed national medical marijuana legislation: The Marijuana Medical Access Regulations.<sup>159</sup> This law, which was passed in 2001, allowed for certain patients with certain illnesses to obtain up to 150 grams (or approximately five ounces) of dried marijuana for medicinal purposes, and the patients were allowed to obtain that amount by either growing their own marijuana plants or going to licensed growers.<sup>160</sup> The law was changed several times due to court cases and other complications with the administration of the law by Health Canada,<sup>161</sup> but it continued to function in essentially the same way, with the biggest change being that users were no longer allowed to grow their own marijuana.<sup>162</sup>

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<sup>154</sup> *Parker*, 49 O.R. (3d) 481; *Canada's marijuana laws declared unconstitutional*, *supra* note 150; *see also* Spicer, *supra* note 137.

<sup>155</sup> *Parker*, 49 O.R. (3d) 481; *see also* Synopsis of *Her Majesty the Queen v. Terrance Parker*, [ontariocourts.on.ca/decisions/2000/July/parkersummary.pdf](http://ontariocourts.on.ca/decisions/2000/July/parkersummary.pdf).

<sup>156</sup> *Parker*, 49 O.R. (3d) 481; *Canada's marijuana laws declared unconstitutional*, *supra* note 150; *see also* Spicer, *supra* note 137; *see also* Synopsis, *supra* note 155.

<sup>157</sup> *Parker*, 49 O.R. (3d) 481; *see also* Synopsis, *supra* note 155.

<sup>158</sup> Spicer, *supra* note 137.

<sup>159</sup> Medical Marijuana Access Regulations, SOR/2001-227 (Can.).

<sup>160</sup> *Id.*

<sup>161</sup> *R. v. Mernagh*, 2011 ONSC 2121 (holding parts of the Marijuana Medical Access Regulations unconstitutional because the patient had a qualifying illness, for which marijuana helped, and could not obtain a medical prescription for it under the current law, similar to the reasoning in *Parker*).

<sup>162</sup> *See* Marijuana for Medical Purposes Regulations (SOR/2013-119) (Can.).

During this time, the Minister of Justice, the Attorney General of Canada, the Minister of Public Safety and Emergency Preparedness, and the Minister of Health created a task force, whose purpose would be to “consult and provide advice on the design of a new legislative and regulatory framework for legal access to cannabis . . .”<sup>163</sup> The task force provided a grueling 106-page report to the Prime Minister’s Cabinet and to the Canadian Senate.<sup>164</sup> The recommendations of the task force were properly viewed through a public health lens, recognizing the risks of marijuana use by youth, its frequently concurrent use with tobacco and alcohol, and the related interactions with illicit use and networks.<sup>165</sup> Their recommendation was to regulate and treat marijuana like alcohol and tobacco: setting a minimum age requirement for purchase and use, requiring strict adherence to regulations on packaging, advertising, labeling of contents, including THC and Cannabidiol (CBD) amounts, and warnings to its use.<sup>166</sup> This report, along with other similar reports, likely had a strong influence in the eventual legalization of the recreational use of marijuana in Canada because it was not long after that Canada would legalize the recreational use of marijuana.<sup>167</sup>

#### **D. Canada Legalizes the Recreational Use of Marijuana**

In 2017, Canada proposed and later passed (in June 2018) the Cannabis Act.<sup>168</sup> This Act decriminalized the possession and recreational use of up to thirty grams (or approximately one ounce) of dried cannabis for anyone over the age of eighteen.<sup>169</sup> Additionally, the Cannabis Act allowed for citizens to grow their own marijuana, though they are not allowed to have more than four plants or any budding or flowering cannabis plants in public places.<sup>170</sup> When this Act passed in June 2018, Canada became only the second country in the world, following Uruguay’s lead, to legalize the recreational use of marijuana.<sup>171</sup>

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<sup>163</sup> Jody Wilson-Raybould, et al., *A Framework for the Legalization and Regulation of Cannabis in Canada*, GOV’T OF CAN. (Nov. 30, 2016), <https://www.canada.ca/content/dam/hc-sc/healthy-canadians/migration/task-force-marijuana-groupe-etude/framework-cadre/alt/framework-cadre-eng.pdf>.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*; see also *Toward the Legalization, Regulation and Restriction of Access to Marijuana*, *supra* note 20 (this is another document published by a different group under the direction of the same task force, just slightly earlier. This earlier document focuses heavily on the background of marijuana, its health risks and effects, theories and notions about marijuana, and lastly, it provides a suggestion for a working system for the legal use of marijuana).

<sup>168</sup> The Cannabis Act, SC 2018, c 16.

<sup>169</sup> *Id.* at c 16, part 1, div. 1(8)(1)(a).

<sup>170</sup> *Id.* at div. 1(8)(1)(d)-(e).

<sup>171</sup> *Id.* at c 16; see also generally Jody Wilson-Raybould et al., *supra* note 163.

It is interesting to note that the Cannabis Act also describes the purposes for its passage, and it clearly adopted the stance recommended by the Task Force: marijuana needs to be decriminalized so that it can be regulated by the government because it poses a public health risk.<sup>172</sup> More specifically, the Cannabis Act gives seven specific areas that Canada found were posing problems to the public health and safety of the nation: (1) “to protect the health of young persons by restricting their access to cannabis;” (2) “protect young persons and others from inducements to use cannabis;” (3) “provide for the *licit* production of cannabis to reduce *illicit* activities in relation to cannabis;” (4) “deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;” (5) “reduce the burden on the criminal justice system in relation to cannabis;” (6) “provide access to a quality-controlled supply of cannabis; and” (7) “enhance public awareness of the health risks associated with cannabis use.”<sup>173</sup>

Though it is probably too soon to determine whether or not these purposes will be met with the passing of the Cannabis Act, Canada wasted no time conducting multiple surveys to research and investigate usage among targeted age populations, the frequency of use among those groups, methods of use, and public perception of Cannabis use.<sup>174</sup> One alarming statistic showed that among those who reported using Cannabis within the last twelve months, nearly forty percent admitted driving within two hours of using Cannabis at one point in their life, and more than seventy percent of that group admitted to doing so within the last twelve months.<sup>175</sup>

## V. SUGGESTION & EVALUATION: US MEDICAL MARIJUANA

### A. Medical Use vs. Recreational Use

As stated previously, public approval of legalizing marijuana is at an all-time high in the US.<sup>176</sup> Although many Americans would likely approve of a jump to the legalization of the recreational use of marijuana, such a drastic and sudden

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<sup>172</sup> The Cannabis Act, *supra* note 168; *see also* Wilson-Raybould et al., *supra* note 163; and *Toward the Legalization, Regulation and Restriction of Access to Marijuana*, *supra* note 20.

<sup>173</sup> The Cannabis Act, SC 2018, *supra* note 168.

<sup>174</sup> *Canadian Cannabis Survey 2018 Summary*, GOV'T OF CAN. (Jan. 6, 2020), <https://www.canada.ca/en/services/health/publications/drugs-health-products/canadian-cannabis-survey-2018-summary.html> (exploring the surveys conducted in 2017 and 2018 which provide incredibly detailed information about even minute details including age of initiation, number of hours the user was “high,” average amount used, average dollar amount spent on Cannabis each month, and frequency of cannabis use to get “high” before school/work, just to name a few).

<sup>175</sup> *Id.*

<sup>176</sup> Adamczyk et al., *supra* note 5; *see also* Nierenberg, *supra* note 8; and *Marijuana Legalization and Regulation*, DRUG POL'Y ALLIANCE (Jan. 7, 2020), <http://www.drugpolicy.org/issues/marijuana-legalization-and-regulation>.

change is unlikely to happen because of some of the dangers that inherently come with marijuana.<sup>177</sup> For example, it seems to be common knowledge that marijuana can help with nausea, but this leads to many experimenting with marijuana before knowing the risks and side effects involved.<sup>178</sup> Although there is research and Food and Drug Administration (FDA) approval of THC- and CBD-based medications that help with symptoms of certain diseases, and may even help to kill or reduce cancer cells,<sup>179</sup> these tools are better left for medical professionals who understand—and are better judges to weigh—the benefits and risks associated with marijuana and its cannabinoids. Additionally, a jump to the outright legalization of the recreational use of marijuana may also struggle because marijuana approval, or the lack thereof, tend to follow partisan lines, with nearly eighty percent of Democrats and “Democrat-leaning independents” being in favor of marijuana legalization, and only fifty-five percent of Republicans and “Republican-leaning independents” in favor of it.<sup>180</sup> Therefore, legalizing marijuana for medicinal use first—if at all—seems the best policy for the public interest, for cooperation between the states and federal government, and for better regulation measures. However, there are some in the Senate that have a much more drastic approach even than the legalization of recreational use of marijuana.<sup>181</sup>

## **B. The MORE Act**

As many of the states of the United States have done, legislation was recently introduced in the United States Senate in August of 2019 to completely decriminalize marijuana.<sup>182</sup> The legislation is titled the “Marijuana Opportunity

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<sup>177</sup> Eric Perez, MD; Marianne Fraser, MSN, RN; & Raymond Kent Turley, BSN, MSN, RN, *The Facts about Recreational Marijuana*, UNIV. ROCHESTER MED. CTR.: HEALTH ENCYC. (Jan. 7, 2020), <https://www.urmc.rochester.edu/encyclopedia/content.aspx?contenttypeid=1&contentid=1925>.

<sup>178</sup> *Marijuana as Medicine*, NAT’L INST. ON DRUG ABUSE (Jan. 8, 2020), <https://www.drugabuse.gov/publications/drugfacts/marijuana-medicine> (stating that many pregnant mothers have reported ingesting marijuana because of the general knowledge that marijuana can help with nausea. However, marijuana ingestion during pregnancy can have serious, detrimental side effects for the baby including abnormal social patterns and learning difficulties).

<sup>179</sup> *Id.*; see also Katherine Scott et al., *The Combination of Cannabidiol and Delta-9-Tetrahydrocannabinol Enhances the Anticancer Effects of Radiation in an Orthotopic Murine Glioma Model*, AM. ASS’N FOR CANCER RSCH. 2014 (Jan. 8, 2020), <https://mct.aacrjournals.org/content/early/2014/11/12/1535-7163.MCT-14-0402.full-text.pdf>.

<sup>180</sup> Andrew Daniller, *Two-thirds of Americans support marijuana legalization*, PEW RESEARCH CENTER (Feb. 3, 2020), <https://www.pewresearch.org/facttank/2019/11/14/americans-support-marijuana-legalization/>.

<sup>181</sup> S. 2227, 116th Cong. (2019) (as introduced by Sen. Kamala Harris, July 23, 2019) [hereinafter “The MORE Act”].

<sup>182</sup> *Id.*

Reinvestment and Expungement Act of 2019” (the MORE Act).<sup>183</sup> The main proponent of the Bill is Senator Kamala Harris (D-CA).<sup>184</sup> The main purpose of the MORE Act is to completely remove marijuana from any schedule of controlled substances under the Controlled Substances Act.<sup>185</sup> This would mean that marijuana could be used by anyone at any time. To be clear, even over-the-counter cough medicines and antidiarrheal medications are on the scheduled list of controlled substances, yet the MORE Act would make marijuana in any form or amount readily accessible to anyone without any federal restraints, restrictions, or safeguards.<sup>186</sup> This is not at all as the title suggests; this Act would do more than just legalize marijuana carte blanche, it would also go so far as to expunge marijuana arrests and violations for anyone who has either of those on their record.<sup>187</sup>

One good thing about this Act is that it takes the federal government of the United States out of the picture on the marijuana debate. Those who argue for less federal government and more power to the states will surely find appeal in this argument because it gives control to the states and the citizens of those states to determine their own stance on such a highly-political question such as marijuana, and more importantly, how to regulate it.<sup>188</sup> This in turn will allow the states to learn from each other and hopefully come up with the best way to treat marijuana.

The biggest problem with the MORE Act is that it is incredibly naïve and ignorant towards marijuana and its effects on the brain, behavior, and body. There are only two reasons for the scheduling of drugs and chemicals by the DEA: (1) the accepted medical use of the drug or chemical; and (2) the potential for abuse or dependency of that drug or chemical.<sup>189</sup> Schedule I drugs under which marijuana currently falls are drugs or substances with the highest potential for abuse and dependency.<sup>190</sup> These schedules help protect the public and give a good framework within which the Department of Justice can prosecute offenders. There is growing support that marijuana would meet the first prong of the DEA’s scheduling, and the FDA’s stamp of approval on THC- and CBD-based medications is simply one example of this.<sup>191</sup> The second prong and purpose of the DEA scheduling also has

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<sup>183</sup> *Id.* § 1.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* § 2(a)(2); 21 U.S.C. § 812.

<sup>186</sup> 21 U.S.C. § 812; see also *Drug Scheduling*, U.S. DRUG ENF’T ADMIN., <https://www.dea.gov/drug-scheduling> (last visited Jan. 11, 2020).

<sup>187</sup> S. 2227, 116th Cong. § 9 (2019).

<sup>188</sup> Alex Suskind, *Cory Booker Explains Why He’s Making Legal Weed His Signature Issue*, VICE.COM, (Oct. 17, 2017, 9:00 PM), [https://www.vice.com/en\\_us/article/qv3dd3/cory-booker-explains-why-hes-making-legal-weed-his-signature-issue](https://www.vice.com/en_us/article/qv3dd3/cory-booker-explains-why-hes-making-legal-weed-his-signature-issue).

<sup>189</sup> *Drug Scheduling*, *supra* note 186.

<sup>190</sup> *Id.*

<sup>191</sup> *Marijuana as Medicine*, *supra* note 178; see also *FDA and Cannabis: Research and Drug Approval Process*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/news-events/public-health-focus/fda-and-cannabis-research-and-drug-approval-process> (last visited Jan. 11, 2020).

relevance for marijuana and would require marijuana to still be scheduled because of its potential risk of abuse and dependency, but it would probably fit better under a different schedule.<sup>192</sup>

There are a growing number of legitimate, scientific, medical, and meta-analysis studies about marijuana, its potential for abuse and dependency, its dangers to the public, its connection to mental diseases, and its connection to behavioral problems, just to name a few.<sup>193</sup> Collectively, all these studies evince that marijuana is a complicated and powerful drug—and to make matters more complicated—with an increasing potency of THC.<sup>194</sup> To simply allow marijuana to be purchased at the store like sugar or flour without any regulations puts the general public in grave danger, if nothing else, for the effects that it can have on a person who is operating a motor vehicle or heavy machinery.<sup>195</sup> While Senator Harris’s MORE Act may be good intentioned, from the perspective of criminal reform, its reasoning is incredibly ignorant, and—more importantly—the results would be devastating for public safety.<sup>196</sup>

### **C. Suggestion for a Medical Marijuana Law**

The fact that marijuana can have different potencies, and the fact that the potency is rapidly increasing,<sup>197</sup> shows that marijuana needs some regulation and

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<sup>192</sup> 21 U.S.C. § 812 (dropping marijuana to a Schedule II drug, if nothing else, would at least allow medical doctors to prescribe marijuana if a situation calls for it).

<sup>193</sup> See, e.g., Eva Martin-Sanchez et al., *Systematic Review and Meta-analysis of Cannabis Treatment for Chronic Pain*, 10(8) PAIN MED. 1353 (2009); Michael Iskedjian et al., *Meta-analysis of cannabis based treatments for neuropathic and multiple sclerosis-related pain*, 23(1) CURRENT MED. RSCH. & OP. 17 (2007); Matthew Large et al., *Cannabis Use and Earlier Onset of Psychosis; A Systematic Meta-analysis*, 68(6) GENERAL PSYCHIATRY 555 (2011); Joanne Brady & Guohua Li, *Trends in Alcohol and Other Drugs Detected in Fatally Injured Drivers in the United States, 1999-2010*, 179(6) AM. J. EPIDEMIOLOGY 692 (2014); Julio Yanes et al., *Neuroimaging meta-analysis of cannabis use studies reveals convergent functional alterations in brain regions supporting cognitive control and reward processing*, 32(3) PSYCHOPHARMACOLOGY 283 (2018); Gabriella Gobbi et al., *Association of Cannabis Use in Adolescence and Risk of Depression, Anxiety, and Suicidality in Young Adulthood: A Systematic Review and Meta-analysis*, 76(4) JAMA PSYCHIATRY 426 (2019) [hereinafter *Collection of Studies*].

<sup>194</sup> *Collection of Studies*, supra note 193; see also Fidelia Cascini, supra note 22.

<sup>195</sup> Hartman, *Cannabis and Driving*, supra note 25; see also Hartman, *Cannabis and alcohol*, supra note 28; Marie-Berthe Biecheler et al., *SAM Survey on “Drugs and Fatal Accidents”: Search of Substances Consumed and Comparison between Drivers Involved under the Influence of Alcohol or Cannabis*, 9(1) TRAFFIC INJ. PREVENTION 11 (2008).

<sup>196</sup> The MORE Act, supra note 181.

<sup>197</sup> Elizabeth Stuyt, *The Problem with the Current High Potency THC Marijuana from the Perspective of an Addiction Psychiatrist*, 115 MO. MED. 482-86 (2018) (describing how the THC content of cannabis before the 1990s used to be less than two percent, but since 1995 that percentage has gone up to somewhere between seventeen and twenty-eight percent).



protections put into place to make sure all products have the same potency. No logical person would go to the store and start taking some Fentanyl without knowing the dosage and ingredients.<sup>198</sup> Although to date there have not been any deaths from marijuana overdoses,<sup>199</sup> smoking one marijuana joint has the same effect on the lungs as five tobacco cigarettes, it contains five times as much carbon monoxide, and three times as much tar.<sup>200</sup> That means that, although tobacco has been the leading cause of preventable death in the US for a long time,<sup>201</sup> marijuana could easily surpass it and stay atop the chart of causes of preventable deaths if it is completely decriminalized without any constraints. Even if this knowledge is disseminated to the general public it still might not be enough to prevent many people from stumbling onto marijuana, and furthermore marijuana addiction, much like addiction to tobacco cigarettes.

Instead, marijuana should be legalized medically and put in the hands of medical professionals. This would allow the medical field to regulate and control the concentration of THC-based medications, similar to the way that other narcotics and prescription drugs are handled, (i.e., through FDA approval and clinical trials.)<sup>202</sup> Like the medical marijuana laws discussed above, the prescription of

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Additionally, these high concentration THC cannabis plants are almost completely incapable of producing much CBD at all, which means that there is almost nothing to counteract the effects of the THC when ingested.)

<sup>198</sup> *Fentanyl*, CTRS. FOR DISEASE CONTROL & PREVENTION (emphasis added), [cdc.gov/drugoverdose/opioids/fentanyl.html](https://www.cdc.gov/drugoverdose/opioids/fentanyl.html) (last visited Feb. 3, 2020) (stating that Fentanyl-related deaths have dramatically increased mostly because of the unknown dosage amount to the users: “most recent cases of fentanyl-related harm, overdose, and death in the U.S. are linked to illegally made fentanyl. It is sold through illegal drug markets for its heroin-like effect. It is often mixed with heroin and/or cocaine as a combination product—*with or without the user’s knowledge*—to increase its euphoric effects.” (Emphasis added)).

<sup>199</sup> *Drugs of Abuse: A DEA Resource Guide, 2017 Edition*, U.S. DEP’T OF JUST. & DRUG ENF’T ADMIN. 75 (June 15, 2017), [https://www.dea.gov/sites/default/files/sites/getsmartaboutdrugs.com/files/publications/DoA\\_2017Ed\\_Updated\\_6.16.17.pdf#page=76](https://www.dea.gov/sites/default/files/sites/getsmartaboutdrugs.com/files/publications/DoA_2017Ed_Updated_6.16.17.pdf#page=76).

<sup>200</sup> Tan Lyn & Alex Richardson, *Cannabis bigger cancer risk than cigarettes: study*, REUTERS (Jan. 29, 2008, 2:25 AM), <https://www.reuters.com/article/us-cancer-cannabis/cannabis-bigger-cancer-risk-than-cigarettes-study-idUSHKG10478820080129>.

<sup>201</sup> *Fast Facts, Smoking & Tobacco Use*, CTRS. FOR DISEASE CONTROL & PREVENTION, [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm) (last visited Jan. 11, 2020).

<sup>202</sup> Agata Dabrowska & Susal Thaul, *How FDA Approves Drugs and Regulates Their Safety and Effectiveness*, CONG. RSCH. SERV. (May 8, 2018), <https://fas.org/sgp/crs/misc/R41983.pdf> (for more information on this process, please see the well-written and insightful, full document. Briefly, the document is a research summary for Congress, discussing how the safety and effectiveness is broken down into two phases: a preapproval stage and a post-approval stage. The first stage involves research by scientists on animals with a prototype. If successful and safe, the company then applies for testing on human subjects. That has three phases of its own with each stage involving more and more human subjects in clinical trials, always assuring for safety and effectiveness. If successful, the drug is then tested to assure that the labeling is effective, and to make sure that the

marijuana should be limited to only those situations in which marijuana has been scientifically shown to help with symptoms of medical problems, and should the evidence indicate, to heal certain medical problems or conditions.<sup>203</sup> The prescription would be similar to other drugs and allow the user to take a prescription from a board-certified doctor to be filled at a legitimate pharmacy, as opposed to some traveling doctor giving prescriptions to be filled at a random and suspect marijuana dispensary.

Although there might be some that would criticize this recommendation because of “big-pharma” and the opioid crisis, and would hate to give more control to them, it is the system within which we find ourselves, and for now, it works to keep the vast majority of the American population safe.<sup>204</sup>

Additionally, with the legalization of marijuana in many states both recreationally and medicinally, there should be some limit of THC that is traceable in the blood, similar to alcohol, which if that limit is passed, becomes a violation of federal law to operate a vehicle or heavy machinery. The presumption would be that the person operating that vehicle or heavy machinery was driving under the influence, similar to the laws passed both in Washington and Colorado.<sup>205</sup> In those states, if a person is found to have a certain blood THC content, they are presumed to be “under the influence,” and are guilty of DUI charges.<sup>206</sup> Currently, there are no easy tests or machines analogous to a breathalyzer that police officers can use to drivers while out on the road, but surely one could be engineered and manufactured with some federal grants and time. If anything, the lack of a standardized, administrable test that officers could give out on the road to test the blood-THC

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manufacturing is sound so that the drug is adequately prepared for its proper strength, purity, and quality. From there, it goes into the post-approval stage which has a large number of checks, registrations, and safeguards, to make sure that once the drug is on the market it is not misused, tampered with, misbranded, or adulterated.)

<sup>203</sup> See, e.g., A.R.S. § 36-2801.

<sup>204</sup> John LaMattina, *Hiding Data And Other Criticisms of Big Pharma*, FORBES (Apr. 24, 2017, 7:58 AM), <https://www.forbes.com/sites/johnlamattina/2017/04/24/hiding-data-and-other-criticisms-of-big-pharma/#19d3eb92333c>.

<sup>205</sup> COLO. REV. STAT. § 42-4-1301(6)(a)(IV) (explaining that if at such time the driver's blood contained five nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood, as shown by analysis of the defendant's blood, such fact gives rise to a permissible inference that the defendant was under the influence of one or more drugs); WASH. REV. CODE § 46.61.506(1), (2)(b) (2017) (effective until July 1, 2022) (“Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug. . . . (b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.”); see also Hartman, *Cannabis and Driving*, *supra* note 25; and Hartman, *Cannabis and alcohol*, *supra* note 28.

<sup>206</sup> C.R.S. § 42-4-1301(6)(a)(IV); WASH. REV. CODE § 46.61.506(1), (2)(b).

content of drivers, boosts the argument that the federal government should wait to legalize marijuana. However, this has not been an impediment to any other prescription drug; if there were truly a suspicion of driving under the influence, and alcohol was not at issue, the police would have to get a blood or urine sample.<sup>207</sup>

## VI. CONCLUSION

States like California, Colorado, and Arizona, and our neighbor country, Canada, have taught us a lot about marijuana and adopting its legalization gradually. To jump right into completely decriminalizing marijuana for recreational use would be imprudent and unsafe for the general population. It seems inevitable that marijuana will someday be legalized for recreational use, yet, the United States and the American people would be foolish to forgo the valuable experience and knowledge that medicinal legalization would bring first, similar to the experience that Canada went through. Therefore, the medical process should be trusted while science catches up so that, if nothing else, there is safety for the rising generation and for those who—for better or worse—choose to indulge in marijuana.

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<sup>207</sup> See *A State-by-State Analysis of Laws Dealing with Driving Under the Influence of Drugs*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Dec. 1, 2009), <https://www.ems.gov/pdf/811236.pdf> (finding that all but five states have extended their implied consent provisions to instances of driving under the influence of drugs. Those implied consent provisions stipulate the type of specimen that law enforcement officers are allowed to collect in the appropriate situations); see also Abby Goodnough & Katie Zezima, *Drivers on Prescription Drugs Are Hard to Convict*, N.Y. TIMES (July 24, 2010), <https://www.nytimes.com/2010/07/25/us/25drugged.html> (reporting on the difficulty of prosecuting someone under the influence of prescription drugs, especially because there are no laws on the limits of prohibited substances in the blood, and because of the actual, legitimate need of some people to take their prescription medicine).

