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LEGALIZATION OF MARIJUANA: THE BENEFITS OF FEDERAL LEGALIZATION

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LEGALIZATION OF MARIJUANA:
THE BENEFITS OF FEDERAL LEGALIZATION

By: Alex W. Chalk*

I. INTRODUCTION

Legalization of marijuana has been a hot topic of debate since the beginning of the 21st century. Many states have passed legislation to legalize marijuana for medicinal use, recreational use, or both. After the 2016 election, the total number of states that have legalized marijuana for medicinal use grew to 28 along with eight states and Washington D.C. that have legalized it in a recreational capacity.¹ This trend has come after a change in the way society has perceived the use of marijuana and its use has become increasingly accepted by a larger number of people. Since 1989, the support for the legalization of marijuana has gone from 16 percent then to 54 percent.² As recent as October of 2015 that number has risen to 58 percent.³ This drastic increase in popularity has allowed these states to be able to pass legislation fostering the medicinal and recreational use of marijuana. However, there are still the other 42 percent that oppose it use. This almost 50/50 divide in ideology begs the question of whether to embrace the change in society or continue to oppress it. So what factors are considered when making this kind of sociological decision? Some of these factors include medicinal purposes, health related issues, economic changes, and the criminal aspect of legalization.⁴ Each of these factors play a large role when people make a decision to support or oppose the legalization of marijuana. As more Americans

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¹ Alicia Wallace, *Where is weed legal? Map of U.S. marijuana laws by state*, THE CANNABIST (Oct. 14, 2016), <http://www.thecannabist.co/2016/10/14/legal-marijuana-laws-by-state-map-united-states/62772/> [hereinafter Wallace].

² Laura Sanders, *High times: Legalization trend forces consideration of pot's dangers*, SCIENCE NEWS, June 14, 2014, at 17 [hereinafter Sanders].

³ Wallace, *supra* note 1.

⁴ See ED ROSENTHAL & STEVE KUBBY, WHY MARIJUANA SHOULD BE LEGAL xii (2003).

warm up to the idea of marijuana being legal, states will continue to consider their own legislation on the issue. There is one big hurdle that states will face when it comes to creating their own laws for marijuana use, and that is that it is still against federal law to possess or distribute marijuana under the Controlled Substances Act.⁵ Persons in states that have passed marijuana use laws can still be prosecuted under federal law for violations of this Act. This dark cloud looms over the progressive movement to legalize marijuana for the number of factors that could benefit from its legalization. This article aims to discuss the different factors that are considered when it comes to the legalization of marijuana and to provide information about the concept to lessen the taboo surrounding the idea of its legalization. Starting with the history of marijuana and how it came to be illegal, this article will go into detail about the medicinal uses and health factors, economic impact, and criminal aspects of its legalization. This is not the first time that a wave of legislation like this has washed over the country. During the 1970s and early 1980s, thirty-one states and the District of Columbia had passed legislation in some form for the use of medicinal marijuana.⁶ A majority of these laws were repealed or allowed to expire a few years later.⁷ It's time to give legalization another chance.

II. THE HISTORY OF MARIJUANA AND ITS LEGALIZATION

Marijuana was first introduced into the United States in 1611 when the settlers of Jamestown used the plant for hemp production in Virginia.⁸ At this time the hemp plant was a crop used for

⁵ 21 U.S.C. § 841 (1970).

⁶ Rosalie Liccardo Pacula et al., *State Medical Marijuana Laws: Understanding the Laws and Their Limitations*, 23 J. PUB. HEALTH POL'Y 413, 417 (2002) [hereinafter Pacula].

⁷ *Id.* at 420.

⁸ *Id.* at 415.

commercial purposes.⁹ This continued well into the 1800s, while marijuana was given to patients by physicians and pharmacists for any number of illnesses including gout, tetanus, convulsions and uterine hemorrhage.¹⁰ The THC, or tetrahydrocannabinol, is the chemical in the marijuana plant that provides the medicinal benefits to people.¹¹ This can be introduced into a person's body by smoking, ingesting, or through vaporizing the cannabis part of the marijuana plant.¹² The production of hemp and the medicinal uses for the plant were commonplace in society in this time period. Starting in 1850, marijuana cannabis was referenced in standard pharmaceutical works such as the United States Pharmacopeia¹³ to treat labor pains, nausea, and rheumatism.¹⁴ Society was very accepting of the use of marijuana until the turn of the 20th century.

A. A Shift in Views About Marijuana in the Early 1900s

The start of the 20th century “ushered in an era of societal reform focused on reducing the recreational use and abuse of many substances, including alcohol and opium.”¹⁵ Marijuana's use as a recreational intoxicant was also commonplace well into the early 1900s.¹⁶ After the ratification of the 18th Amendment, also known as the prohibition Amendment, and the passage of its “companion” legislation, The Volstead Act, in 1919 alcohol was made illegal across the

⁹ *History of marijuana*, NARCONON.ORG, <http://www.narconon.org/drug-information/marijuana-history.html> (last visited Dec. 13, 2016) [hereinafter *History*].

¹⁰ Pacula, *supra* note 6, at 415.

¹¹ Alina Bradford, *What is THC?*, LIVE SCIENCE (Apr. 7, 2015), <http://www.livescience.com/24553-what-is-thc.html> [hereinafter Bradford].

¹² Sanders, *supra* note 2, at 18.

¹³ Pacula, *supra* note 6, at 415.

¹⁴ *History*, *supra* note 9.

¹⁵ Pacula, *supra* note 6, at 415.

¹⁶ *History*, *supra* note 9.

country.¹⁷ Next was marijuana. Despite all of the previously accepted medicinal and commercial uses in the early stages of the country, this new waves of societal reform began to focus on marijuana’s recreational use in a negative light. By the late 1920s, it was common in the media to see sensationalist reports of violence stemming from the use of marijuana.¹⁸ Some of the negativity surrounding the use of marijuana came from interests with economic motives to hinder the production of hemp in favor of other commodities.¹⁹ The way these interests went about this was by using fear that immigrants, particularly Mexicans, were getting crazy on “locoweed” and committing violent acts of crime.²⁰ Even the U.S. government made an attempt to foster similar fears about marijuana. In the 1930s, the U.S. Federal Bureau of Narcotics conducted a campaign to portrait marijuana as a highly addictive substance that would create a “gateway” into the use of other drugs.²¹ This fear motivated fifteen states to pass legislation prohibiting the sale or possession of marijuana in 1927, with another fourteen states following suit by 1931.²² When the U.S. government passed the Marihuana Tax Act in 1937, each of the fifty states had enacted laws that criminalized the possession and sale of marijuana.²³

¹⁷ See generally *Prohibition*, HISTORY.COM (2009), <http://www.history.com/topics/prohibition>.

¹⁸ Pacula, *supra* note 6, at 415.

¹⁹ Matt Thompson, *The Mysterious History Of ‘Marijuana’*, NPR (July 22, 2013), <http://www.npr.org/sections/codeswitch/2013/07/14/201981025/the-mysterious-history-of-marijuana>.

²⁰ *Id.*

²¹ *History*, *supra* note 9.

²² Pacula, *supra* note 6, at 415.

²³ Pacula, *supra* note 6, at 415.

B. The Marihuana Tax Act of 1937

As the majority of states began to pass legislation regarding the prohibition of marijuana, it was only a matter of time before the federal government got involved. Harry J. Anslinger, who became the first chief of the Federal Bureau of Narcotics, was the pioneer of anti-marijuana policy.²⁴ Anslinger preyed on the country's manufactured fear of marijuana use and fabricated stories that marijuana caused "madness, mayhem, murder and the despoliation of youth" while also denouncing medical and sociological studies that were favorably reviewed by the American Medical Association.²⁵ Behind Anslinger, the Marijuana Tax Act of 1937 was the way the federal government would attempt to regulate marijuana in the country.²⁶ Although the Act did not prohibit the use of marijuana on a federal level, it was essentially meant to tax it out of existence.²⁷ A person would have to pay a tax of \$100 an ounce for recreational purposes which was more than the cost of the marijuana itself.²⁸ Similarly, for physicians, pharmacists, and doctors who wished to proscribe marijuana to their patients the Act required extensive paperwork, registration, licensing, and annual taxes to be paid by the prescribers.²⁹ The American Medical Association itself opposed the Act "on the grounds that (a) it would limit a physician's ability to truly control the non-medical use of marijuana, and (b) it would needlessly overburden physicians who wanted

²⁴ J. Herbie DiFonzo & Ruth C. Stern, *Divided We Stand: Medical Marijuana and Federalism*, 27 NO.5 HEALTH LAW. 17, 17 (2015) [hereinafter DiFonzo & Stern].

²⁵ *Id.* at 17-18.

²⁶ *Id.*

²⁷ See Alex Kreit, *The Future of Medical Marijuana: Should the States Grow Their Own?*, 151 U. PA. L. REV. 1787, 1793 (2003) [hereinafter Kreit].

²⁸ *Id.*

²⁹ See Kreit, *supra* note 27; and Pacula, *supra* note 6, at 415.

to prescribe marijuana, therefore making them less willing to do so.”³⁰ When considering the Act, the American Medical Association’s representative stated to Congress that, “he believed that its ultimate effect would be to strangle any medicinal use of marihuana.”³¹ The government went through with their legislation despite the opposition from the medical community. After the enactment of the Marihuana Tax Act of 1937, prescriptions of marijuana declined because doctors felt it was easier to not proscribe it than to jump through the hoops of all the extra paperwork, registration, and payment of extra costs that were imposed on them by the Act.³² This realization and mindset of the medical community culminated in the removal of cannabis from the United States Pharmacopeia in 1942.³³ Although the Marijuana Tax Act of 1937 did not prohibit the use and sale of marijuana completely, the passage of the Controlled Substances Act in 1970 would change all of that.³⁴

C. The Federal Controlled Substances Act of 1970

In 1970, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act, also known more commonly as the Controlled Substances Act (CSA), under their implied power to regulate interstate commerce to maintain the health and welfare of Americans.³⁵ The Act was passed in large part because Nixon had just been elected president on a campaign that promised to be tough on crime, so he saw this opportunity to follow through with that promise on a federal

³⁰ Pacula, *supra* note 6, at 415.

³¹ Kreit, *supra* note 27.

³² Pacula, *supra* note 6, at 415-16.

³³ Pacula, *supra* note 6, at 416.

³⁴ Kreit, *supra* note 27, at 1793-94.

³⁵ *See generally* 21 U.S.C. § 801 (1970) (Congressional findings and declarations in favor of Act).

level.³⁶ The CSA establishes five “schedules” of substances that are numbered I-V and have different criteria for a substance to fit into each schedule.³⁷ Marijuana was and still is classified as a Schedule I controlled substance.³⁸ The CSA states that the findings for a substance to be considered a Schedule I substance are, “(a) [t]he drug or other substance has a high potential for abuse; (b) [t]he drug or other substance has no currently accepted medical use in treatment in the United States; (c) [t]here is a lack of accepted safety for use of the drug or other substance under medical supervision.”³⁹ Although marijuana had been used medicinally by countless physicians, pharmacists, and doctors for over 100 years prior to the CSA being enacted, it was still considered a Schedule I substance under the Act. The increasingly low numbers of marijuana prescriptions for medicinal purposes paved the way for the idea that marijuana had a very minimal accepted medical use that led to its Schedule I classification and eventual prohibition.⁴⁰ Marijuana is classified as a Schedule I substance along with other substances including heroin, morphine, lysergic acid diethylamide (LSD), mescaline, peyote, and 3, 4-methylenedioxy amphetamine (MDMA, ecstasy).⁴¹ Marijuana seems to be a sore thumb sticking out of this list of Schedule I substances. Only 2 years after the CSA was enacted, a petition was submitted to the Bureau of Narcotics and Dangerous Drugs, now the DEA, to reschedule marijuana to a Schedule II substance in order for physicians to prescribe it legally.⁴² Numerous court battles ensued for the next 22 years

³⁶ Kreit, *supra* note 27, at 1794.

³⁷ 21 U.S.C. § 812(a-b) (1970).

³⁸ 21 U.S.C. § 812(c) (1970).

³⁹ 21 U.S.C. § 812(b) (1970).

⁴⁰ Pacula, *supra* note 6, at 416.

⁴¹ 21 U.S.C. § 812(c) (1970).

⁴² Pacula, *supra* note 6, at 416.

over the petition until a decision was finally rendered on Feb. 18th, 1994 by the U.S. Court of Appeals for the D.C. Circuit which upheld the DEA's decision to keep marijuana as a schedule I substance.⁴³ However, this failed attempt was not in vain. Throughout the 1970s and 1980s, thirty-three states passed medical marijuana laws in their respective jurisdictions.⁴⁴ During these years the government set up the FDA's Investigational New Drug program that allowed states to set up similar marijuana therapeutic research programs to allow patients to get the medical marijuana they needed.⁴⁵ Because of federal oversight and strict establishment requirements, only eight states were able to use these research programs.⁴⁶ The federal government still had the last say under the CSA. The programs were disbanded when the FDA approved a drug known as Marinol which is a synthetic version of the chemical tetrahydrocannabinol that is found in marijuana.⁴⁷ By the mid-1980s most of the state laws for medical use of marijuana were repealed or allowed to expire.⁴⁸ It was not until the early 1990s that smoking marijuana was discovered to have a substantial positive affect on patients who suffered from nausea related to AIDS and cancer that was not treatable by Marinol.⁴⁹ This discovery led the way to a new wave of marijuana legislation.

⁴³ Pacula, *supra* note 6, at 416.

⁴⁴ Kreit, *supra* note 27, at 1794.

⁴⁵ See Kreit, *supra* note 27, at 1794; and Pacula, *supra* note 6, at 417.

⁴⁶ Pacula, *supra* note 6, at 419.

⁴⁷ Kreit, *supra* note 27, at 1794-95.

⁴⁸ Pacula, *supra* note 6, at 420.

⁴⁹ Pacula, *supra* note 6, at 420.

D. Current Marijuana Legislation

When California endorsed the use of medical marijuana in 1996, it began a new wave of opposition to the prohibition of marijuana.⁵⁰ The approval of Proposition 215, the Compassionate Use Act, by the people of California removed the criminal penalties at the state level and allowed patients who were prescribed marijuana by their doctors to possess and use marijuana for medicinal purposes.⁵¹ The Act gives doctors and physicians the ability to prescribe medicinal marijuana to patients when they have “determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.”⁵² This would have been a normal occurrence 100 years prior to this Act being approved, but because of the federal prohibition of marijuana the states have had to take matters into their own hands. However, this did not come without a fight. Arizona passed a similar initiative to California’s Compassionate Care Act, but it was essentially nullified when its own legislation made it so prescribing doctors were at risk of losing their licenses for prescribing marijuana to patients.⁵³ Legislative battles were even going on at the state level. The federal response to California passing the Compassionate Care Act was to target not only the physicians, but the dispensaries as well.⁵⁴ Only a year after the Act’s passage did the federal government seek to enjoin the cultivation and distribution of several

⁵⁰ DiFonzo & Stern, *supra* note 24.

⁵¹ Ruth C. Stern & J. Herbie DiFonzo, *The End of the Queen’s Race: Medical Marijuana in the New Century*, 27 QUINNIPIAC L. REV. 673, 674 (2009) [hereinafter Stern & DiFonzo].

⁵² Compassionate Use Act, CAL. HEALTH & SAFETY CODE § 11362.5(b)(1)(A) (Deering 1996).

⁵³ Kreit, *supra* note 27, at 1796-97.

⁵⁴ Kreit, *supra* note 27, at 1797.

marijuana dispensaries which led to many federal court battles ultimately concluding in a permanent injunction.⁵⁵ The physician's battle against the federal government was conversely more successful. The Compassionate Care Act provided that "[n]otwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes."⁵⁶ The federal government sought to do just that by punishing those doctors and physicians who recommended marijuana as a treatment.⁵⁷ Not long after finding out about the federal government's plan to do this, a group of doctors filed suit to enjoin the federal government's actions which was unanimously upheld by the Ninth Circuit.⁵⁸ The Court effectively enjoined the federal government from "revoking a physician's license to prescribe controlled substances or conducting an investigation of a physician that might lead to such revocation, where the basis for the government's action is solely the physician's professional 'recommendation' of the use of medical marijuana."⁵⁹ This was a big win for opposition of the prohibition of marijuana because the federal courts did not find for the government which gave hope to future progression in legislation. But this progression did have its speedbumps. In 2005, California residents brought a case to the Supreme Court seeking injunctive and declaratory relief from the enforcement of the Controlled Substances Act after sheriffs and DEA agents confiscated six medicinal marijuana plants from one of the resident's homes.⁶⁰ Even

⁵⁵ See Kreit, *supra* note 27, at 1797-98.

⁵⁶ Compassionate Use Act, CAL. HEALTH & SAFETY CODE § 11362.5(c) (Deering 1996).

⁵⁷ Kreit, *supra* note 27, at 1798.

⁵⁸ Kreit, *supra* note 27, at 1798.

⁵⁹ *Conant v. Walters*, 309 F.3d 629, 632 (9th Cir. 2002).

⁶⁰ See *Gonzales v. Raich*, 545 U.S. 1, 7 (2005).

though the Compassionate Care Act had been in effect for almost twenty years, the federal government was still prosecuting patients for medicinal marijuana use. The case came down to whether the government had the power to regulate the cultivation and use of marijuana under their implied Commerce Clause power over the state laws in place that allowed individuals to possess and grow their own marijuana.⁶¹ The court ultimately sided with the federal government and allowed them to use their Commerce Clause power to continue to regulate marijuana even though the individuals were complying with state law.⁶² This has been the federalism battle that has been raging as more and more states pass laws to end the prohibition of medicinal and recreational use of marijuana. However, recently the trend has been towards relaxing federal prosecution and allowing a more lenient stance against medicinal marijuana. In 2009, The Department of Justice instructed the Attorney General's to "not focus federal resources ... on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."⁶³ In 2013, the DOJ also took measures to align federal enforcement of marijuana law with state laws as long as "the operation is demonstrably in compliance with a strong and effective state regulatory system."⁶⁴ The change in the federal government's stance has paved the way for not only more medicinal use of marijuana, but also recreational use. In 2012, the states of Colorado and Washington passed proposition 64 and Initiative 502 respectively that allowed them to become the first states to "legalize the use and sale of marijuana by adults 21 and older."⁶⁵ Today, twenty-

⁶¹ *Id.* at 5.

⁶² *See generally Id.*

⁶³ DiFonzo & Stern, *supra* note 24, at 19.

⁶⁴ DiFonzo & Stern, *supra* note 24, at 19.

⁶⁵ John W. Hickenlooper, *Experimenting with Pot: The State of Colorado's Legalization of Marijuana*, 92 MILBANK Q. 243, 243 (2014) [hereinafter Hickenlooper].

eight states have laws that allow medicinal use of marijuana while eight states and the District of Columbia have laws allowing recreational use.⁶⁶ In 2015, multiple forms of legislation have been sent to both the House of Representatives and the U.S. Senate for approval which would allow the federal government to legalize, regulate and tax marijuana, change marijuana from a Schedule I to a Schedule II substance, and effectively end the prohibition of marijuana at a federal level.⁶⁷ The impact of the most recent wave of marijuana legislation will have profound effects on many different areas. The use of marijuana for medicinal purposes is at the forefront. With less hurdles and speedbumps to maneuver, more patients will have access and more research can be done about the positive effects of marijuana. The economic aspect can be considered as positive because there is already a significant market in place. Also, the complete decriminalization of marijuana will help clear up the hazy battle between state and federal laws.

III. MEDICINAL USES OF MARIJUANA

Before all of the anti-marijuana legislation of the early 1900s prohibited the use of marijuana, it was used very regularly by doctors and physicians to treat common symptoms and illnesses. The fear of recreational use was the main reason marijuana legislation prohibited its use without considering the health benefits of keeping it legal for medicinal uses. Only recently has there been apt research done on the effects that marijuana has on the health of a person in both the short and long term. To understand the benefits of marijuana, it is best to look at how it works in a person's body.

⁶⁶ Wallace, *supra* note 1.

⁶⁷ See generally DiFonzo & Stern, *supra* note 24, at 19.

A. What is Marijuana?

The actual marijuana that is smoked and ingested comes from the leaves and flowers that protrude from the hemp plant, also known as *Cannabis sativa*.⁶⁸ The marijuana plant contains at least 460 compounds that include 60 cannabinoids that are unique to cannabis, the most popular and main psychoactive compound being delta-9-tetrahydrocannabinol or THC.⁶⁹ When an individual smokes, vapes, or ingests marijuana, the THC attaches itself to proteins in the brain called cannabinoid receptors type 1, also known as CB1.⁷⁰ The THC takes about 10 to 30 minutes to react with the brain's CB1s to release dopamine that creates a sense of euphoria that lasts around two hours.⁷¹ The brain also creates its own cannabis known as endocannabinoids that also react with the CB1s to influence pain, memory, mood, and appetite.⁷² These are the areas that medicinal marijuana has been used to treat since the plant has been discovered. The THC chemical has also been found to attach to a similar cannabinoid receptors, CB2s, which are found in the pancreas, thymus, tonsils, bone marrow, and the spleen which are the "major tissues of immune cell production and regulation."⁷³ The natural nature of how THC effects the brain is what proponents of marijuana say have a lot to do with the desired effect. "It's got a novelty, it's got its own receptor system and its own set of effects. The fact is that not a lot of other substances hit that CB1

⁶⁸ Peter A. Clark, *The Ethics of Medial Marijuana: Government Restrictions vs. Medical Necessity*, 21 J. PUB. HEALTH POL'Y 40, 42 (2000) [hereinafter Clark].

⁶⁹ *Id.*

⁷⁰ Sanders, *supra* note 2, at 18.

⁷¹ See Bradford, *supra* note 11.

⁷² Sanders, *supra* note 2, at 18.

⁷³ Stern & DiFonzo, *supra* note 51, at 696.

receptor,” says Mitch Earleywine, a psychologist at the University of Albany in New York.⁷⁴ Instead of the brain’s naturally produced endocannabinoids attaching to the CBs, the THC from the marijuana hijacks the CBs and gives the body the effects of the THC chemical. This reaction is what has been found to be the most beneficial in medicinal uses of marijuana to treat a variety of issues.

B. Medicinal Benefits of Marijuana

The health benefits of medicinal marijuana have been recognized and used in the United States since the 1800s. When the legislation to prohibit marijuana began to lose its muster in the late 1900s, many studies began to be done on the benefits of medicinal marijuana. Despite the ban on its use, clinical studies have been done that show marijuana helps with “treating pain, neurological and movement disorders, nausea of patients undergoing chemotherapy for cancer, loss of appetite and weight (cachexia) related to AIDS, and glaucoma.”⁷⁵ A 1997 study by the National Institutes of Health showed that an expert panel suggested marijuana had beneficial effects on five areas of health, which were it: “(1) stimulates appetite and alleviates cachexia, (2) controls nausea and vomiting associated with cancer chemotherapy, (3) decreases intraocular pressure for those suffering from glaucoma, (4) analgesia, and (5) neurologic and movement disorders are relieved.”⁷⁶ Another report in 1999 done by the Institute of Medicine stated that “marijuana clearly seems to relieve some symptoms for some people,” and recognized “pain, nausea and vomiting, wasting syndrome and appetite stimulation, neurological symptoms (including muscle spasticity), and glaucoma” as areas that could be benefitted from by the use of

⁷⁴ Sanders, *supra* note 2, at 18.

⁷⁵ Clark, *supra* note 68.

⁷⁶ Clark, *supra* note 68, at 45.

medicinal marijuana.⁷⁷ These early studies done as states began to relax their marijuana prohibition laws focused on treating symptoms of various sicknesses. As the research has progressed, more uses for medicinal marijuana have appeared and scientists have been able to link the use of marijuana to not only treatment of symptoms, but to treatment of the actual disease itself. Research has showed that marijuana use can help patients with multiple sclerosis with their “tremor, spasticity, anxiety, and pain,” as well as reducing inflammation that leads to less relapses.⁷⁸ Scientists have looked at this inflammation-moderating trait to help treat amyotrophic lateral sclerosis (ALS), Parkinson’s disease, Huntington’s disease, and to not only treat, but also help prevent Alzheimer’s disease.⁷⁹ Colorado’s Board of Health in 2014 approved grants worth \$8 million to study if medicinal marijuana will assist in the treatment of Parkinson’s disease, PTSD, and epilepsy and brain tumors in children.⁸⁰ One of the main focuses of the most recent studies on the health benefits of medicinal marijuana is its effect on cancer cells in the body. One of the leading causes of death in the United States is cancer at over half a million people per year.⁸¹ Over thirty published reports by credible health and science journals and sources have proven that medicinal marijuana not only helps to mitigate the effects that chemotherapy has on the body, but also targets cancer cells and shrinks tumors in multiple forms of cancer from lung, to breast, to

⁷⁷ See Pacula, *supra* note 6, at 427-28.

⁷⁸ Stern & DiFonzo, *supra* note 51, at 697.

⁷⁹ See Stern & DiFonzo, *supra* note 51, at 697-98.

⁸⁰ DiFonzo & Stern, *supra* note 24, at 20.

⁸¹ See *Leading Causes of Death*, CDC.GOV, <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm> (last updated Oct. 7, 2016).

brain cancer.⁸² A study done on nonmelanoma skin cancer revealed that the reaction between the cannabinoids and the CB1 and CB2 receptors in the skin and skin tumors helped in the regression of the tumors.⁸³ With so many known medicinal uses it is unusual that marijuana is still considered a Schedule 1 drug under the CSA. There is no risk of death when it comes to putting marijuana into your body⁸⁴ but there have been some minimal side effects. Marijuana use can affect the short term memory functions while on the substance, has been linked to cardiovascular problems in young cannabis users, and makes a person less likely to operate a motor vehicle.⁸⁵ Conversely, most of the short term negative mental effects were absent in people who had stopped using marijuana for a month.⁸⁶ Some studies have looked at the link between marijuana use and psychosis, particularly onsets of schizophrenia, but they have shown that the worst cases are from patients who have a family history or already have a form of mental disorder.⁸⁷ However, these manageable downsides of medicinal marijuana are small in comparison to the multitude of benefits it presents to the medical field, especially in comparison to other substances.

C. Marijuana vs. The Alternatives

When compared to other substances that are given to patients for similar symptoms and diseases, marijuana is the safest and most effective. A synthetic form of THC in pill form that was

⁸² See generally Michael Taillard, *34 Medical Studies Proving Cannabis Cures Cancer*, THEMINDUNLEASHED.COM (Dec. 10, 2013), <http://themindunleashed.com/2013/12/34-medical-studies-proving-cannabis-cures-cancer.html>.

⁸³ See Stern & DiFonzo, *supra* note 51, at 697.

⁸⁴ See Sanders, *supra* note 2, at 18; and Stern & DiFonzo, *supra* note 51, at 700.

⁸⁵ See Sanders, *supra* note 2, at 18.

⁸⁶ Sanders, *supra* note 2, at 20.

⁸⁷ See generally Stern & DiFonzo, *supra* note 51, at 700-01.

approved by the FDA in 1985 and produced by Unimed Pharmaceuticals, Inc. called Marinol is a Schedule II drug used for treatment of nausea and vomiting of chemotherapy patients and helping with appetite and weight loss in AIDS patients.⁸⁸ The problems with the FDA's attempt to manufacture a substitute were that the Marinol's dosage was too unpredictable making it either too weak or too strong for the patient, the psychoactive effects were sometimes greater, and the length of time it lasted was hard to ensure.⁸⁹ The Marinol was also found to be a more expensive alternate and patients had difficulty swallowing the pill for nausea as it would cause the patient to throw up the pill before the benefits could take effect, making marijuana a more viable option.⁹⁰ When the THC is administered through the lungs it is much easier for the patient to gauge how much they need to alleviate the pain without suffering from the psychoactive effect of the marijuana because the Marinol lacks the extra cannabinoids that marijuana has to regulate the psychoactive properties.⁹¹ The other alternative to treating similar symptoms and diseases that marijuana treats is the use of prescription drugs approved by the FDA. From the years 2010 to 2014, the number of persons in the United States who died of a drug overdose rose by 23% according to the National Vital Statistics System.⁹² Those drugs that caused the increase in overdoses consist of opioids used for pain such as oxycodone, hydrocodone, morphine, and fentanyl, as well as benzodiazepines that treat anxiety, depression, insomnia, and nausea.⁹³ Deaths

⁸⁸ Clark, *supra* note 68, at 43.

⁸⁹ See Stern & DiFonzo, *supra* note 51, at 704.

⁹⁰ Clark, *supra* note 68, at 43.

⁹¹ Stern & DiFonzo, *supra* note 51, at 704.

⁹² Alice Park, *These Are the 10 Most Deadly Drugs*, TIME (Dec. 20, 2016), <http://time.com/4607935/these-are-the-10-most-deadly-drugs/?iid=sr-link> [hereinafter Park].

⁹³ See *Id.*

from the painkiller fentanyl alone doubled in only one year's time from 2013 to 2014.⁹⁴ The same symptoms that are treated by drugs that are highly addictive and have led to proven overdoses can be better treated by the use of medicinal marijuana. A 2016 study done by the University of Michigan showed that patients who used medicinal marijuana to control their pain reported a 64% reduction in their use of opioids.⁹⁵ One of the lead authors on the project, Kevin Boehnke, said that, “[w]e’re in the midst of an opioid epidemic and we need to figure out what to do about it, I’m hoping our research continues a conversation of cannabis as a potential alternative for opioids.”⁹⁶ Instead of the government trying to rehabilitate people from opioid addiction,⁹⁷ there are better alternatives in the form of medicinal marijuana. More legislation allowing the use of medicinal marijuana to treat these symptoms and diseases would help patients tremendously to heal themselves without the risk of further harming themselves at the same time.

IV. Economic Aspect of Legalization

As the prohibition of marijuana is being lifted by more states, the economics that go with essentially a new product being placed on the market is something to be carefully considered. Psychologist Mitch Earleywine, a known proponent for the legalization of marijuana, has concerns about its commercialization saying that, “America is so free market and wild that it’s going to take some reining in to make sure that no one is penalized for it and medical users have access, but it’s

⁹⁴ *Id.*

⁹⁵ Laurel Thomas Gnagey, *Medical marijuana reduces use of opioid pain meds, decreases risk for some with chronic pain*, MICHIGAN NEWS (Mar. 22, 2016), <http://ns.umich.edu/new/releases/23622-medical-marijuana-reduces-use-of-opioid-pain-meds-decreases-risk-for-some-with-chronic-pain>.

⁹⁶ *Id.*

⁹⁷ *See Park, supra* note 92.

not sponsoring every sport event or on TV every five seconds.”⁹⁸ The black market for marijuana in the United States has grown rapidly in the recent years. As recent as 2013, the amount of people who admitted marijuana use almost reached ten percent, and this was not for medicinal purposes.⁹⁹ The instant amount of income should be a benefit for any state that chooses to legalize marijuana and could eventually a benefit the federal government. Colorado is one of the states that has legalized marijuana for recreational purposes,¹⁰⁰ and possibly the most famous.

A. Marijuana Legalization in Colorado

In 1975, the state of Colorado started the trend on the decriminalization of marijuana and eventually legalized medicinal marijuana in November of 2000.¹⁰¹ Colorado became one of the first states to legalize marijuana for recreational purposes on November 6, 2012 by the passage of Amendment 64.¹⁰² The amendment to the state constitution makes marijuana legal for persons over the age of twenty-one and allows the state to tax marijuana similarly to alcohol.¹⁰³ This express ability to tax marijuana means that there will be an influx of tax income almost instantaneously. In November of 2013, Colorado passed a referendum called Proposition AA that “imposed a 15 percent tax on sales of recreational marijuana from cultivators to retailers and a 10 percent tax on

⁹⁸ Sanders, *supra* note 2, at 20.

⁹⁹ Don Melvin, *Marijuana study: Number of Americans taking up doubles in 10 years*, CNN.COM (Oct. 22, 2015), <http://www.cnn.com/2015/10/22/us/marijuana-use-up/>.

¹⁰⁰ Hickenlooper, *supra* note 65.

¹⁰¹ Jeffery Morin, *Marijuana Policy in Colorado*, 24 CATO WORKING PAPER 1, 5 (2014), https://object.cato.org/sites/cato.org/files/pubs/pdf/working-paper-24_2.pdf [hereinafter Morin].

¹⁰² Hickenlooper, *supra* note 65.

¹⁰³ CO. CONST. art. XVIII, § 16(1)(a)

retail sales, on top of the existing 2.9 percent state sales tax for all goods.”¹⁰⁴ Medicinal marijuana remained only subject to the state sales tax of 2.9% and the first \$40 million in total revenue was to be set aside for school construction across the state and educational campaigns on marijuana use.¹⁰⁵ The state of Colorado’s budget office initially projected the state will collect \$134 million from marijuana sales a year in February of 2014.¹⁰⁶ While the number started slow at only \$56 million for 2014, the number rose to \$113 million in 2015 and will likely exceed \$140 million in 2016.¹⁰⁷ This is all revenue from a market that was already in place, although illegal. Now that the laws have changed, the state can collect the endless streams of revenue to help with the state budget as well as be able to regulate the market in the best interest of the people of Colorado. Colorado is a great example of how other states and the federal government can cash in on marijuana.

B. Other State’s Taxation and the Federal Government’s Potential Tax Revenue

While Colorado may be the most popular state to legalize and tax marijuana, several other states have done the same. Along with Colorado, the other states who have legalized recreational marijuana include Washington, Oregon, California, Nevada, Alaska, Maine and Massachusetts, along with the District of Columbia.¹⁰⁸ Many other states have legalized marijuana for medicinal

¹⁰⁴ Morin, *supra* note 101, at 9-10.

¹⁰⁵ Morin, *supra* note 101, at 10.

¹⁰⁶ Hickenlooper, *supra* note 65, at 247.

¹⁰⁷ Joseph Henchman & Morgan Scarboro, *Marijuana Legalization and Taxes: Lessons for Other States from Colorado and Washington*, TAXFOUNDATION.ORG (May 12, 2016), <http://taxfoundation.org/article/marijuana-legalization-and-taxes-lessons-other-states-colorado-and-washington> [hereinafter Henchman & Scarboro].

¹⁰⁸ Wallace, *supra* note 1.

purposes as well.¹⁰⁹ Washington State has placed a 37 percent excise tax on the price of marijuana while allowing other taxes, such as a State Business & Occupation tax, compared to their 104% tax on cigarettes and their 11% tax on beer.¹¹⁰ Like Colorado, Washington's sales started slow at \$62 million for the first year of sales from July 1, 2015 to June 30, 2016, but since then Washington has seen an increase in sales to over \$2 million per day that would yield an annual tax revenue of over \$270 million.¹¹¹ In January of 2016, Oregon's 17% tax rate yielded the state \$3.48 million, three times the projection, and the state could see an excess of \$60 million a year when all of the taxes are collected.¹¹² When Alaska begins selling recreational marijuana statewide, their Department of Revenue has estimated that the state will collect between \$5 and \$19 million annually.¹¹³ While these number may not be staggering, the income is there for the taking as the market is already in place. These few states have shown that there is a substantial amount of money being spent on marijuana and the tax revenue from these sales can help to benefit the economies of each state, and eventually the country as a whole. If the federal government does away with the Controlled Substances Act and takes a proactive approach to legalizing and taxing marijuana it could be looking at billions of dollars in tax revenue.¹¹⁴ An early 90s report showed estimates of consumers and their usage rate compared to the potential retail marijuana sales could yield between

¹⁰⁹ See Wallace, *supra* note 1.

¹¹⁰ Henchman & Scarboro, *supra* note 107.

¹¹¹ Henchman & Scarboro, *supra* note 107.

¹¹² Henchman & Scarboro, *supra* note 107.

¹¹³ Henchman & Scarboro, *supra* note 107.

¹¹⁴ Michael R. Caputo & Brian J. Ostrom, *Potential Tax Revenue from a Regulated Marijuana Market: A Meaningful Revenue Source*, 53 AM. J. ECON. & SOC. 475, 478 (1994) [hereinafter Caputo & Ostrom]; see also Henchman & Scarboro, *supra* note 107.

five to nine billion dollars.¹¹⁵ Today, following the model set out by Colorado and Washington, a fair tax rate countrywide could capture more of the black market for marijuana sales and yield \$18 billion annually.¹¹⁶ This extra income per year could help tremendously with the national debt, funding more abuse and addiction programs, pay for more roads, schools, community centers, and parks, as well as stimulate the economy as a whole by a market that is already in place.

V. Criminalization and Legalization of Marijuana

Although many states have passed their own legislation to allow marijuana to be possessed and used, it is still prohibited by the other states and the federal government under their statute. Under the current Controlled Substances Act, in the United States it is illegal to possess marijuana¹¹⁷ and could result in a prison sentence not to exceed 5 years and/or a fine not to exceed \$250,000.¹¹⁸ For most common people these are not problems that can be dealt with easily. Any time away from a person's family or job will cost them money, memories, and set them back financially and sociologically. Many convicted offenders potentially lose their jobs and have a hard time securing another one. It is also a burden on the taxpayers and the economy to house all of the inmates in prison for marijuana. Decriminalization of marijuana has been gaining ground as a popular trend across the country and should continue.

¹¹⁵ See Caputo & Ostrom, *supra* note 114.

¹¹⁶ See Henchman & Scarboro, *supra* note 107.

¹¹⁷ 21 U.S.C. § 841(a)(1) (1970).

¹¹⁸ 21 U.S.C. § 841(b)(1)(D) (1970).

A. The Cost of the “War on Drugs”

Since the 1970s when President Nixon began his “War on Drugs” the number of people incarcerated for drug violations, including marijuana, have been on the rise. In a period from 1980 to 2006, annual arrests related to marijuana increased from 350,000 to over 800,000.¹¹⁹ In 2014, that number stayed steady at over 700,000 with about 619,800, or 88.4%, of those arrests were for nothing more than possession.¹²⁰ The total number of arrests for marijuana made up almost 45% of all drug-related arrests that year, while charges for possession alone made up 39.7% of all drug arrests and 5.5% of all total arrests made in 2014.¹²¹ This is an unnecessary burden and cost to place on law enforcement and the prison system to process all of these violations. The government spends over \$3.6 billion dollars every year on marijuana enforcement alone, according to a study done by the American Civil Liberties Union.¹²² This does not include the amount of money a person personally loses from fees, bail, missing work, or a complete loss of employment. One report shows that a person who has been incarcerated can expect to earn almost \$180,000 less than his non-incarcerated counterpart through the age of 48 years old, not including the loss of income while incarcerated.¹²³ This number becomes ever higher if the person previously incarcerated

¹¹⁹ Robin Room, *Prohibition of cannabis: Is not achieving its aims in the US, and may even worsen outcomes*, 341 BRIT. MED. J. 744, 744 (2010).

¹²⁰ Nick Wing, *Police Arrest Someone For Weed Possession Every 51 Seconds In 2014*, HUFFINGTONPOST.COM (Sept. 28, 2015), http://www.huffingtonpost.com/entry/marijuana-arrests-2014_us_560978a7e4b0768126fe6506 (last updated Dec. 21, 2016).

¹²¹ *See Id.*

¹²² *Id.*

¹²³ BRUCE WESTERN & BECKY PETTIT, COLLATERAL COSTS: INCARCERATION’S EFFECT ON ECONOMIC MOBILITY 12 (The Pew Charitable Trusts, 2010).

cannot find employment upon release. Not only does the individual lose money from the incarceration but so do the taxpayers of the state. A 2012 study showed that the average cost to taxpayers to incarcerate an individual averaged \$31,286 and is almost double the national average in states like New York where that number is over \$60,000.¹²⁴ When you add up all of the money that is thrown at enforcing marijuana laws compared to the economic and health benefits that have and could come from its legalization, it is not difficult to see that decriminalization is much needed. The new trend of legalization and society's changing view to acceptance of marijuana usage should assist in more decriminalization of marijuana.

B. Decriminalization of Marijuana

The trend to legalize marijuana has picked up steam since the late 1990s when several states began to pass legislation to make it legal for persons to possess and use marijuana for medicinal purposes.¹²⁵ This trend has continued since then as now more than half of the states have passed legislation to legalize marijuana for medicinal purposes with eight states and the District of Columbia legalizing it for recreational purposes.¹²⁶ Even in states that have not fully legalized marijuana for medicinal and recreational uses the state legislatures have passed laws to tone down the punishments for marijuana. Instead of legalizing marijuana, this form of “decriminalization” has been beneficial. The state of Illinois the legislation passed a bill in 2016 that lowered the punishment for possession of up to 10 grams of marijuana from a class B misdemeanor, potentially

¹²⁴ See CHRISTIAN HENRICHSON & RUTH DELANEY, *THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS* 9 (Vera Institute of Justice, 2012).

¹²⁵ See Alistair E. Newbern, *Good Cop, Bad Cop: Federal Prosecution of State-Legalized Medical Marijuana Use after United States v. Lopez*, 88 CAL. L. REV. 1575, 1577 (2000).

¹²⁶ Wallace, *supra* note 1.

resulting in six months jail time, and a fine of up to \$1500 to only a fine of between \$100 and \$200.¹²⁷ The citations will also be expunged automatically twice a year on Jan. 1 and July 1 of every year.¹²⁸ This follows a model put in place by the city of Chicago that allows law enforcement officers to issue citations of \$250 to \$500 to persons caught with less than 15 grams of marijuana.¹²⁹ These punishments make it more manageable for a person who is cited to take care of the citation and move on with their life instead of having to endure the hardships of going through the court system and/or being incarcerated. This also allows law enforcement officers and the court systems to have more time to take care of more pressing issues and more serious offenses. According to the FBI's Uniform Crime Report, in 2015 only 46% of the total number of violent crimes were solved while only 61.5% of murders were solved.¹³⁰ Rape cases were solved less than 40% of the time.¹³¹ With less resources going towards the prosecution of persons for simple marijuana charges, these resources can be put to better use by focusing them on more violent offenders and crimes. Decriminalization can help to attribute to a change that is good for everyone. Although the federal government still prohibits the possession and use of marijuana their stance has eased up slightly over the past few years. In August of 2013, Attorney General Eric Holder sent a letter to the governors of Colorado and Washington that stated the Department of Justice

¹²⁷ Monique Garcia, *Rauner reduces punishment for minor pot possession from jail to citation*, CHICAGOTRIBUNE.COM (July 29, 2016), <http://www.chicagotribune.com/news/local/breaking/ct-illinois-marijuana-decriminalization-0730-20160729-story.html>.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ FBI: UCR, *2015 Crime in the United States*, UCR.FBI.GOV, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/clearances> (last visited, Jan. 12, 2017).

¹³¹ *Id.*

would defer to state law and local authorities to regulate marijuana-related law enforcement unless it was necessary to protect the public health or federal policy interests.¹³² A memo written by Deputy Attorney General James Cole was sent to U.S. attorneys across the country that established eight top priorities that the federal government would enforce marijuana laws: “the distribution of marijuana to minors; marijuana revenue going to criminal enterprises gangs, and cartels; the transportation or diversion of marijuana from states where it is legal to where it is illegal; state-authorized marijuana activity being used as a ‘cover up’ for trafficking of other illegal drugs or activity; violence and the use of firearms in the cultivation and distribution of marijuana; drugged driving and adverse effects on public health; the cultivation of marijuana on public lands; the possession or use of marijuana on federal property.¹³³” This was a positive step in the direction towards federal decriminalization, although the federal government still reserves its right to file a lawsuit under the Controlled Substances Act that still considers marijuana illegal.¹³⁴ The trend towards total legalization is shifting upward with the help of decriminalization. The amount of states already having legalized marijuana combined with the efforts to decriminalize it in other places will maybe help to persuade the U.S. government to follow suit.

VI. Conclusion

Marijuana has been used across the world for many purposes for thousands of years and is legal in many countries around the world.¹³⁵ The United States is not one of those countries despite marijuana being widely used by its people for a variety of things in the early stages of its

¹³² Morin, *supra* note 101, at 10.

¹³³ Morin, *supra* note 101, at 11.

¹³⁴ Morin, *supra* note 101, at 10.

¹³⁵ *See generally History, supra* note 9.

existence.¹³⁶ The change in philosophy towards the acceptance of marijuana and legislation passed down by the government in the 1900s put the country in the situation it is in now when it comes to marijuana laws. The reasons that marijuana became illegal to begin with need to be considered in a new light and the legislation regarding marijuana should reflect the new trend in society of acceptance. The use of marijuana for medicinal purposes is one of its oldest and most consistent uses. A multitude of symptoms and diseases can be treated using marijuana despite the federal government saying otherwise by considering marijuana a Schedule 1 substance.¹³⁷ Legalization of marijuana will also lead the way to more research and development of its benefits that may not be known yet due to the prohibition and lack of research done. There are enough benefits from its medical use alone to end its prohibition. The economic value of its legalization will also help to benefit the United States as a whole the way it has already benefitted the states who have taken the initiative. The market for marijuana already exists across the country and there is plenty of tax revenue to be made to help in any way with the current financial situation in the United States. Billions of dollars are there for the government's taking. Legalization will also take a burden off of law enforcement agencies across the board as they will not have to hassle with enforcement of the laws against marijuana. There is an inevitable battle between the federal and state governments when it comes to the enforcement of the different laws each has on the issue. It will free up many resources and funds to allocate towards battling more violent crimes and keeping our streets safer by keeping officers from being bogged down trying to take care of a simple possession offense. At the same time, less people will go to jail and have to overcome the setbacks of the judicial process for petty crimes such as possession, or personal cultivation of marijuana for medicinal

¹³⁶ See generally Pacula, *supra* note 6, at 415.

¹³⁷ See 21 U.S.C. § 812(b) (1970).

purposes. The states have begun a movement towards the legalization of marijuana and it's time for the U.S. government to take a good look at their own prohibition and consider its pros and cons. More Americans than ever are proponents of marijuana legalization and it grows more acceptable by society by the day. It is time to end marijuana prohibition and allow the country reap the benefits.

