State Medical Cannabis Laws Are Not Preempted By Federal Law

While cannabis possession and distribution — even for medical purposes — remains a federal crime under the Controlled Substances Act (CSA) and the Supremacy Clause of the United States Constitution provides that federal law is the "supreme Law of the Land,"[1] that is not the entire story: The U.S. system of government is one of dual sovereignty where the states can and do serve as "laboratories of democracy."

Congress never intended to preempt state drug laws, and the 10th Amendment prevents Congress from forcing states to mirror or enforce federal policies.

Although federal law creates challenges and injustices for medical cannabis patients and businesses — including related to banking, HUD housing, and for immigrants — it does not stand in the way of states allowing and regulating access to medical cannabis. If federal law stood in the way of states taking their own approach, we would not have 39 states with comprehensive medical cannabis laws.

Congress Did Not Intend to Preempt State Cannabis Laws

The question of federal preemption is a question of Congressional intent. The CSA makes it clear it only preempts state laws under very limited circumstances. 21 U.S.C. 903 says it is not intended to preempt the field of drug laws if "there is a positive conflict" between state and federal law "so that the two cannot consistently stand together." Courts have generally held that a state law is only preempted by the CSA if it is "physically impossible" to comply with both state and federal law or if the state law stands as an obstacle to the CSA. Neither is the case with carefully crafted state medical cannabis programs.

A state law — or a portion of it — would be preempted under impossibility preemption if it *required* someone to violate federal law. For this reason, effective medical cannabis laws do not require state workers to grow or dispense marijuana in violation of federal law; they just regulate private individuals who choose to do so. *Requiring* someone to break federal law is quite different from *allowing* and *regulating* conduct under state law.

The Tenth Amendment Protects State Medical Cannabis Laws

The Tenth Amendment limits what state laws can be federally preempted. While the federal government is free to enforce its own marijuana laws, requiring state agents to enforce federal laws would be unconstitutional commandeering of a state's resources.

In 2018, the U.S. Supreme Court overturned a federal law, PASPA, that sought to prohibit states from authorizing sports gambling, noting PASPA "violates the anticommandeering rule" that flows from the 10th Amendment.[2] The court explained, "It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine."

While that ruling was not about cannabis, the same principle would invalidate a federal attempt to

prohibit states from legalizing medical or adult-use cannabis. In Arizona, a state court had previously rejected a preemption challenge based on the same constitutional principle, noting:

It is of considerable consequence that it is Arizona's attempt at partial decriminalization with strict regulation that makes the AMMA vulnerable … This view, if successful, highjacks Arizona drug laws and obligates Arizonans to enforce federal prescriptions that categorically prohibit the use of all marijuana. The Tenth Amendment's "anti-commandeering rule" prohibits Congress from charting that course.[3]

The federal government has never alleged in court that federal laws preempt state medical cannabis or legalization and regulation laws. In fact, the Department of Justice (DOJ) argued in favor of dismissing a lawsuit claiming Arizona's medical marijuana law was preempted. That suit was dismissed.[4]

Congress Has Prohibited Enforcement of Its Own Laws

Since late 2014, Congress has approved a rider to the annual Justice Department appropriations bill that provides that the funds may not be used to interfere with the implementation of state medical marijuana laws.[5] The Ninth Circuit Court of Appeals has interpreted this rider as preventing the federal government from prosecuting individuals complying with state medical marijuana laws.[6]

Rescheduling Does Not Change the Need for States to Act

In 2024, following a recommendation from the U.S. Department of Health and Human Services and the FDA, the DEA proposed rescheduling cannabis to Schedule III — which would acknowledge that cannabis has "currently accepted medical use" and a lower potential for abuse than Schedule II drugs, such as fentanyl and oxycodone. The rescheduling process could still take many months or years, given threats of litigation. Even then, state medical cannabis laws will be needed to provide legal protections and safe access to cannabis. Rescheduling would not make cannabis an FDA-approved drug. That process costs as much as a billion dollars and takes up to 10 years for each individual preparation.

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[1] U.S. Constitution Article VI, cl. 2.

[2] *Murphy v. NCAA*, No. 16–476, U.S. (2018)

[3] *White Mountain Health Center, Inc. v. Maricopa County*, CV 2012-053585 (Arizona Superior Court, Maricopa County, 2012).

[4] *Arizona v. United States*, No. CV 11-1072-PHX-SRB, slip op. at 2 (D. Ariz. Jan. 1, 2012).

[5] See: Consolidated and Further Continuing Appropriations Act of 2015, Section 538, Pub. L. 113-235, 128 Stat. 2130 (2014).

[6] *U.S. v. Marin Alliance for Medical Marijuana*, No. C 98-00086 CRB, decided October 19, 2015.