IN THE HAZE

The Impact
of Marijuana Legalization
"The voters have spoken and we have to respect their will. This will be a complicated process, but we intend to follow through. That said, federal law still says marijuana is an illegal drug so don’t break out the Cheetos or Goldfish too quickly."

-Colorado Governor Hickenlooper, 2012
The Impact of Marijuana Legalization

- State Legalization
- Federal Law
- Ethics
- Dude! Economics, Tourism, Banking, Safety and Enforcement
State Legalization

“One of federalism’s chief virtues, of course, is that it promotes innovation by allowing for the possibility that ‘a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.’”

Gonzales v. Raich, 545 U.S. 1, 42 (2005) (O’Conner, J., dissenting)
(quoting New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting))
COLORADO
AMENDMENT 64
RECREATIONAL MARIJUANA
What’s Allowed

- Permits persons 21 or older to **consume and grow** marijuana and **possess**, gift and transport up to 1oz.
  - Non-residents can purchase ¼ oz.

- Permits **retail sale** of marijuana and marijuana products
What’s Allowed

- Permits **licensing** of cultivating, product manufacturing and testing facilities, as well as retail stores

- Permits local governments to **regulate or ban** such facilities
What’s **Not Allowed**

- Selling, distributing or transferring to anyone **under 21**

- **Driving** under the influence

- Consumption that is “**open and public**” or endangers others
What’s Not Allowed

- Smoking marijuana is prohibited everywhere cigarette smoking is banned

- Smoking is prohibited:
  - In marijuana retail stores
  - On rented property if prohibited by landlord
  - Depending on the city, back patio, front porch or balcony
  - Hotels (can allow or turn a blind eye to use)
What’s **Not** Allowed

- Smoking **and possession** are prohibited:
  - At the airport
  - On all federal lands
How It Works

- Marijuana Enforcement Division
- Seed-to-sale tracking – Marijuana Inventory Tracking Solution (MITS)
- Vertical integration
- Obtaining a license
Legislation

- Driving under the influence of drugs bill
- Legislation implementing Amendment 64 and state taxes
What’s Allowed

- Any person 21 years of age or older to **consume** marijuana or **possess** up to 1 oz.

- Retail sale of recreational marijuana

- Licensing scheme for processors, wholesalers and retailers

- An Excise Tax of 25% at each point of sale
What’s Not Allowed

- Public consumption of marijuana
- Home grown marijuana for use or sale
- Driving under the influence of marijuana
FEDERAL TENSION

“[Marijuana legislation is] reckless and irresponsible”

-Top DEA Official
The Controlled Substances Act

- Prohibition
  - Unlawful for any person “knowingly or intentionally to:
    - manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense, a controlled substance;
    - create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.”

- Penalties
  - Civil and criminal, including forfeiture

- Amending the CSA
Amending the CSA

- Who can amend?
  - Congress
  - The Executive Branch

- What can be done?
  - Reclassification
  - Exemption
The DOJ Cole Memorandum
Eight Enforcement Priorities Preventing:

- Distribution of marijuana to *minors*
- Revenue from sale of marijuana from going to *criminal enterprises*, gangs and cartels
- *Diversion* of marijuana from states where it is legal under state law in some form to other states
- State-authorized marijuana activity from being used as a cover or pretext for the *trafficking* of other illegal drugs or other illegal activity
The DOJ Cole Memorandum

Eight Enforcement Priorities Preventing:

- **Violence** and use of firearms in the cultivation and distribution of marijuana
- **Drugged driving** and exacerbation of other adverse public health consequences associated with marijuana use
- Growing marijuana on public lands and the attendant **public safety and environmental dangers** posed by marijuana production on public lands
- Preventing marijuana possession or use on federal property
ETHICAL ISSUES

Does anybody really want these [business owners] going around with self-written operating agreements or leases pulled [from] Whateverdocument.com?”

-Warren Edson, Edson, Maytin & Matz LLP
Attorney specializing in marijuana-related matters
Representing Marijuana-Related Businesses

*Ethics Rule 1.2(d)* “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity scope, meaning or application of the law.”
Colo. Bar Association
Ethics Committee

Opinion 125

- Question addressed: Whether, and to what extent, a Colorado lawyer may counsel clients regarding the use of, and commerce in, marijuana consistent with Colo. RPC 1.2(d).
- Recommendation to adopt proposed amendments re: 8.6 and 8.4
Colo. Proposed New Ethics Rule 8.6
Counseling Clients Concerning Marijuana

“Notwithstanding any other provision of these Rules, a lawyer shall not be in violation of these Rules or subject to discipline for counseling or assisting a client to engage in conduct that, by virtue of [Colorado State law] the lawyer reasonably believes to be either permitted or within an affirmative defense to prosecution under state criminal law, and which the lawyer reasonably believes is in compliance with legislation or regulations implementing such provisions, solely because that same conduct, standing alone, may violate federal criminal law.”
Colo. Proposed Comment

Ethics Rule 8.4 (Misconduct)

“[2A] A lawyer’s “medical use” or “personal use” of marijuana that, by virtue of any of the following provisions of the Colorado Constitution, is either permitted or within an affirmative defense to prosecution under the state criminal law, and which is in compliance with legislation or regulations implementing such provisions, does not reflect adversely on the lawyer’s honesty, trustworthiness, or fitness in other respects, solely because that same conduct, standing alone, may violate federal criminal law…”
The **crime/fraud exception** applies when a client consults a lawyer for the purpose of getting assistance to engage in a crime and later accomplishes that purpose.

Communications ordinarily protected by the attorney-client privilege may be discoverable under the crime/fraud exception if they regard conduct involving the marijuana industry.
Washington’s Proposed Changes

- In October 2013, King County Bar Association proposed rule changes that mirror those proposed in Colorado to the Washington Supreme Court.
- Also in October 2013, the Chief Disciplinary Counsel of the Washington State Bar Association wrote to the WSC arguing against KCBA’s proposals.
- In November 2013, the WSC requested the WSBA to provide a formal recommendation regarding the proposed rules by January 31, 2014.
CONTROVERSIES AND PROBLEMS IN IMPLEMENTATION

“The only real solution is an act of Congress…”

- Don Childears, President & CEO
  Colorado Bankers Association
“In time, through the smell of the money, which is literally one way it’s detected, they figure out the nature of the business. I’ve also heard that now, some marijuana businesses trying to escape that use Febreze or something else on the money before it’s deposited.”

- Don Childears, President & CEO
Colorado Bankers Association
Laws Governing Banks

- The Bank Secrecy Act
- The Controlled Substances Act
- Money Laundering Statutes
- Unlicensed Money Transmitter Statute
- Racketeering Charges
- “Know Your Customer” Doctrine
Implications for Marijuana-Related Businesses

- Day-to-day operations
- Taxes
- Target for robberies
- Target for black market
- Inability to get loans and lease property
EMPLOYMENT

Reminder: Your job's not safe just because pot's legal

- Bryce Crawford
  Reporter, Colorado Springs Independent
Coats v. Dish Network

- An employer can fire an employee for off-the-clock use of medical marijuana
- Colorado Supreme Court to review the case and answer two questions:
  - Whether Colorado’s Lawful Activities statute covers marijuana, and
  - Whether Colorado’s constitution gives medical marijuana patients a right to marijuana.
Taxes

- **Colorado**
  - $14M in sales of rec. marijuana in Jan. 2014
    - special sales tax + standard sales tax + excise tax
  - = more than $2M in tax revenue

- **Washington**
  - 44% tax on each dollar not including sales tax
$134M

Amount **Colorado** could collect in taxes from medical and recreational marijuana sales
In Colorado, weed is more popular than President Barack Obama

-Timothy Stenovec
The Huffington Post
A Bourgeoning Industry?

- Out of state visitors: all access tours
  - $1,200 - $2,500 per person

- Gift up to 1 oz./purchase ¼ oz.

- No transporting out of the state

- Neighboring state enforcement
APPEAL TO MINORS & PUBLIC SAFETY
Marijuana Products

- Colorado law requires **child-resistant packaging** and prohibits labels designed to appeal to children

- Problems:
  - appeal to children and teenagers
  - easy for minors to “use” without adult realizing they’re getting high
  - confusion, especially with young children, that product is just candy
  - “gateway” product for minors
Creates greenhouse gas pollution equivalent to 3 million cars.
"There's a growing trend of older Americans who are using marijuana in their retirement. That makes sense because old people are always talking about their joints."

–Jimmy Fallon
52% Of Americans favor legalizing marijuana
The Breakdown

- Millennial—65%  
  (1981-now)
- Gen X—54%  
  (1955-1980)
- Boomer—50%  
  (1946-54)
- Silent—32%  
  (1925-1945)
Tried
70%

Never tried
35%
72%

Believe the government’s efforts to enforce laws cost more than they’re worth
60%

Believe the federal government should not enforce federal laws prohibiting use in states where it’s legal.
Trending Movements to Legalize

Other States
- Alaska
- Arizona
- California
- Idaho
- Maryland
- New Jersey
- New Mexico
- Oregon

Other Countries
- Brazil
- Morocco
- Mexico
- Uruguay
CLOSING THOUGHTS