

**IRELAND
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When Will the Haze Clear? Marijuana Legalization and the States

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“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’Connor, J., dissenting)
(quoting New State Ice Co. v.
Liebmann, 285 U.S. 262, 311
(1932) (Brandeis, J., dissenting))*



Program Overview

- Basic terminology
- Industry status
- Current medical marijuana states
- Current retail marijuana states
- Legalization efforts in 2016
- Unsettled topics in legalization
- Pending supreme court lawsuit

Basic Terminology

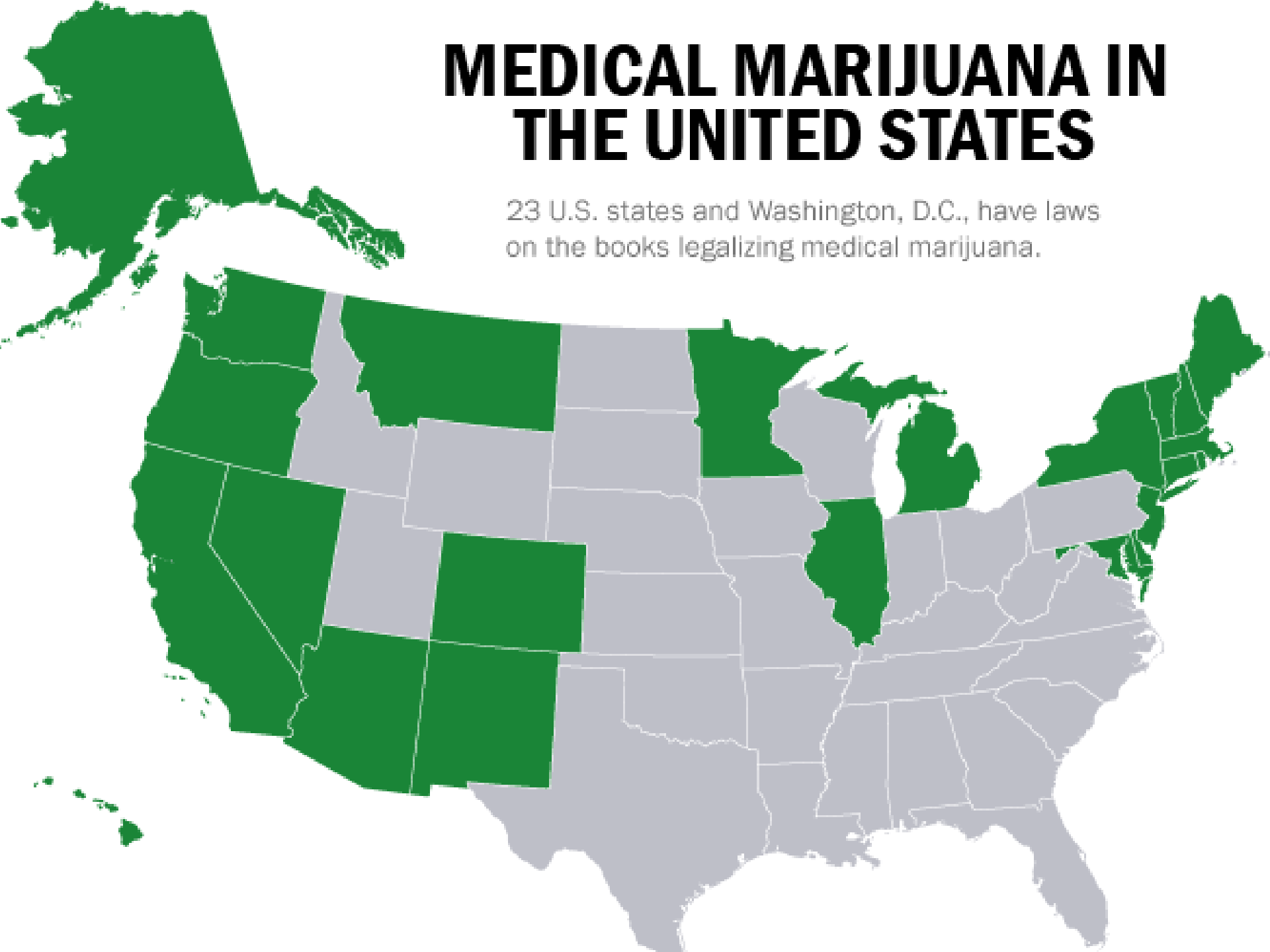
- Retail/recreational
- Dispensary/center/store
- OPC/cultivation – grow facility
- MIP – marijuana infused product
- Excise tax
- Decriminalization/legalization

Industry Status

- 40 states have legalized marijuana in some form as of 2016
- National legal cannabis market size: \$2.7 billion
- Estimated legal cannabis market size in 2019: \$10.2 billion
- Marijuana taxes and fees in Colorado in 2014: \$76.2 million
- Number of Americans that use cannabis monthly: 23.1 million
- 53% of Americans supported marijuana legalization in 2015, compared to 12% in 1969
- 69% of Americans believe alcohol is more harmful to a person's health than marijuana
- 49% of Americans have tried marijuana at least once

MEDICAL MARIJUANA IN THE UNITED STATES

23 U.S. states and Washington, D.C., have laws on the books legalizing medical marijuana.



Medical Marijuana Overview

- 23 states, Washington DC and Guam have comprehensive laws and programs for the use of medical marijuana
 - California was first in 1996
 - New York just began sales in Jan. 2016
- 17 states allow for limited medical use of marijuana either with low-THC products, as a legal defense or for research purposes

Medical Marijuana Programs

- Patient registry and ID cards
- Qualifying medical conditions
- Dispensary and cultivation licensing
- Recommendation or referral required
- Caregivers allowed to cultivate and provide marijuana to patients
- Personal possession limits

Retail Marijuana Overview

- 4 states and Washington, D.C. allow for the retail/recreational use of marijuana
- In January 2014 Colorado became the first jurisdiction in the world with a comprehensive regulatory structure for the sale of retail marijuana
- In November 2015 Ohio voters turned down retail marijuana legalization

Retail Marijuana Overview

- Colorado: sales began Jan. 2014
- Washington: sales began July 2014
- Oregon: sales began Oct. 2015 only by existing medical dispensaries, retail license application process started Jan. 2016
- Alaska: retail license application process to start Feb. 2016
- Washington DC: No system for licensed retail sales, only personal use

Retail Marijuana Programs

- Regulations based on existing state liquor licensing structure
- Licensing for cultivators, producers and retail sellers
- Excise taxes on cultivation and sale
- Personal possession limits
- Regulations for marketing, labeling and production

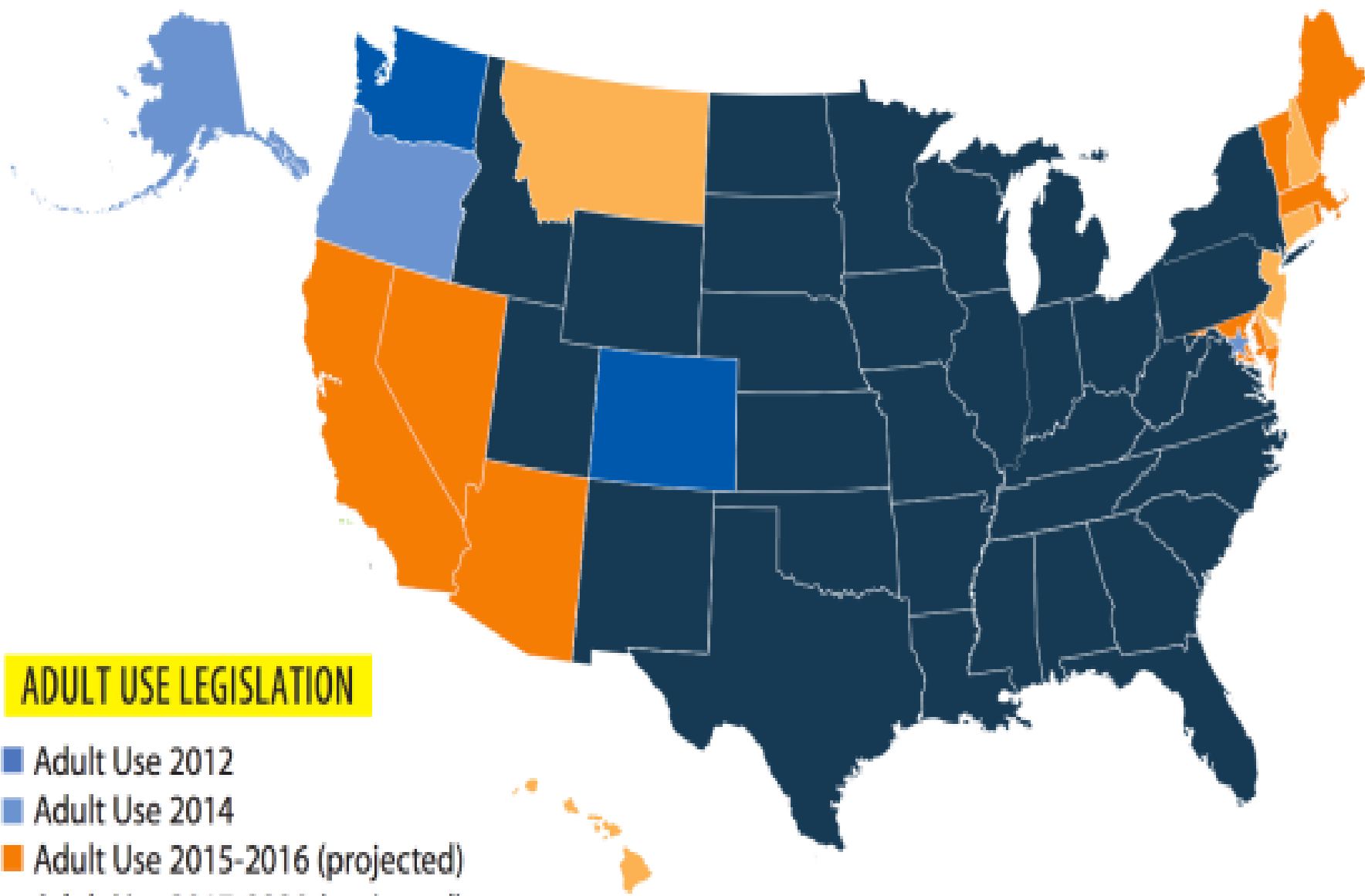
*“2016 Will Be
Marijuana’s Big
Year”*
– Forbes

*“2016 Will Be the
Biggest Year Yet for
Marijuana Policy
Reform”*
– Huffington Post

*“These Five
States Could
Legalize
Marijuana in
2016”*
– Time

Legalization Efforts in 2016

- Commentators suggest 2016 may be the biggest year yet due to the number of states considering legalization, tax revenue data and regulatory experience from states with retail marijuana, and expected voter turnout in Nov. 2016 general elections



ADULT USE LEGISLATION

- Adult Use 2012
- Adult Use 2014
- Adult Use 2015-2016 (projected)
- Adult Use 2017-2020 (projected)
- No Adult Use Law

Legalization Efforts in 2016

- Retail: Nevada, California, Massachusetts, Michigan, Arizona, Vermont, Maine, Missouri and Rhode Island
- Medical: Florida
- Various stages of ballot initiative approval or consideration by state legislature
- Focus of campaigns: “regulate marijuana like alcohol”

Unsettled Topics in Legalization

- Current employment trends
- Access to banking
- Product testing and labeling
- Federal legalization efforts
- Future marijuana market

CURRENT EMPLOYMENT TRENDS

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

-Bryce Crawford
Reporter, Colorado Springs Independent

Marijuana

Relevant Employment Laws

Lawful Off-Duty Conduct

Employers cannot fire employees for doing legal things on their own time and away from the workplace, even if the employer objects to the activity.

Unemployment Compensation

Benefits can be denied if the employee was fired because he/she had “not medically prescribed” controlled substances in his/her system at work.

Workers' Compensation

Benefits can be reduced by 50% if the injury resulted from the presence of “not medically prescribed” controlled substances in the employee's system.

ADA/CADA

Using medical marijuana to treat disability not protected, so long as adverse action based on uniformly applied drug policy

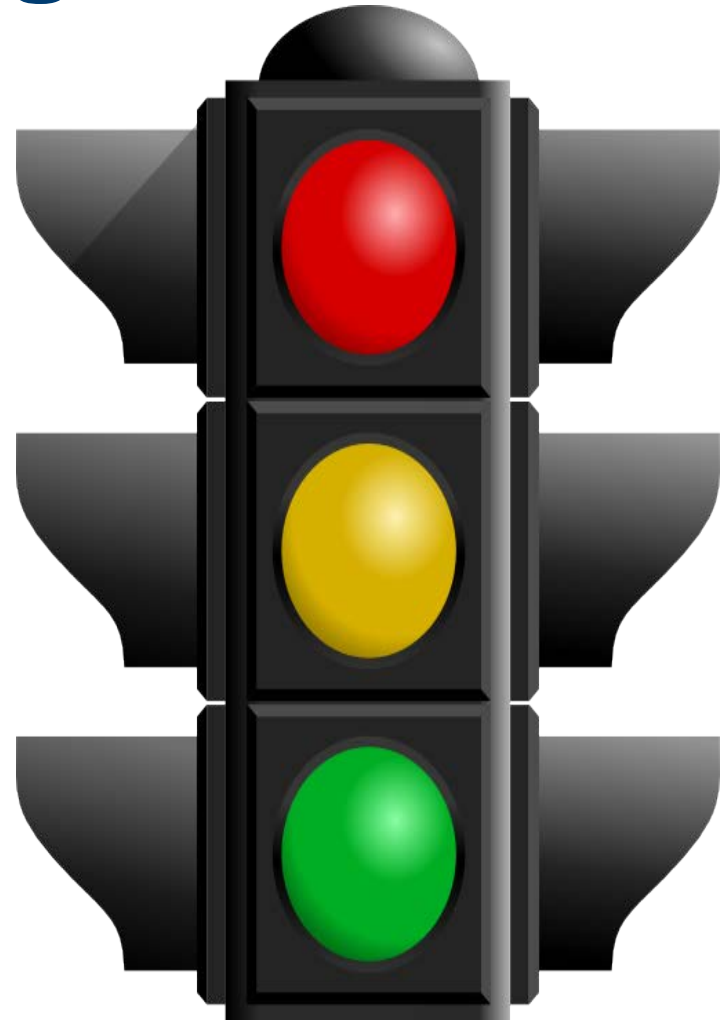
The Reality

Workplace Impact & Other Considerations

- Company **reputation**
 - Conflict of interest/ethics policies
- Drug **testing**
 - Use vs. exposure
 - Impaired at work?
 - Losing good employees to bad policies
- **Federal** funding
 - Federal grants, funding, or employ federal contractors?
 - Must comply with federal regulations
- Third-party employee **benefits**
 - Drug-free life insurance policies
 - Workers' compensation

Access to Banking

- FinCEN guidance in Feb. 2014 designed as “green light” for marijuana banking services
- Banks are still reluctant
- Congressional attempts to provide banking access
- Fourth Corner Credit Union



Product Testing and Labeling

- Moving target for states
- Common strategies: child-resistant packaging, marijuana-specific labels and warnings on packages, licensing source, serving size
- Challenges: different THC potency across same type of products, pesticide use on marijuana plants, lack of standard testing procedures

Retail Marijuana revised Universal Symbol Examples

On Packaging/Labeling
for all types of Retail
Marijuana:



Contains Marijuana. Keep
out of the reach of children.

- The Universal Symbol must be labeled on the front of the packaging in red and white as it appears above.
- The Universal Symbol must be at least ½" x ½" on the packaging/labeling.
- Directly under the Universal Symbol, the licensee must place the warning label "Contains Marijuana. Keep out of the reach of children."

This is a non-exhaustive list of requirements - Review the R 1000 series rules for all packaging/labeling requirements.

On Edible Retail
Marijuana Product:



- The Universal Symbol must be marked on at least one side of each Standardized Serving Of Marijuana.
- Coloring is not required for the on-product Universal Symbol marking.
- The Universal Symbol must be at least ¼ " x ¼ " on the product.

This is a non-exhaustive list of requirements - Review rule R 604(C.5) for all Edible Retail Marijuana Product marking requirements.

Federal Legalization Efforts

- Congress could pass new legislation or amend the Controlled Substances Act (CSA)
- FDA and DEA could reclassify marijuana through administrative process

Future Marijuana Market

- Medical and retail markets unlikely to merge due to tax revenues and patient needs
- Pot clubs are not prevalent due to legal uncertainty, but expected to come in the future
- Marijuana tourism



Supreme Court Lawsuit

- Filed by Nebraska and Oklahoma against Colorado in Dec. 2014
- Plaintiff states seek to invalidate Colorado's retail marijuana regulatory structure
- Focus is on commercial market, not personal possession laws

Supreme Court Lawsuit

- Plaintiffs argue that Colorado's regulatory structure is unlawful under the CSA, federal criminal laws and international treaties and violates the Supremacy Clause, causing increased cross-border marijuana trafficking and law enforcement and fiscal burdens on their states
- Colorado filed a response in opposition in March 2015
- United States Solicitor General filed a response in Dec. 2015

CLOSING THOUGHTS

