



MARIJUANA FEDERALISM IN THE 2020 PRESIDENTIAL ELECTION

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by KATHERINE ADELMAN '21

State-level cannabis legalization has continued throughout the years of the Trump presidency. During the midterm elections of 2018, voters in Missouri and Utah passed measures legalizing marijuana for medicinal purposes and Michigan voters approved marijuana for recreational purposes. Federally, the possession, sale, and use of marijuana still violates the federal Controlled Substances Act (CSA) of 1970; however, there are currently only eight states where marijuana is completely illegal for both medicinal and recreational uses.¹ Around the world, other countries have legalized recreational cannabis including Canada, Georgia, South Africa, and Uruguay.

The Trump administration withdrew its plan to increase enforcement of federal law in Colorado, where recreational cannabis is legal, after Senator Cory Gardner (R-CO) blocked multiple confirmations of potential Justice Department nominees. While the federal government still does not enforce the CSA, more states have begun releasing and expunging criminal records for individuals who were arrested on marijuana charges. This federal debate has grown in importance, especially as it relates to criminal justice reform. Nonetheless, the Supreme Court's ruling in *Gonzalez v. Raich* states that Congress – under the

Commerce Clause-- still has the power to regulate activities that substantially affect interstate commerce.² Thus, the Court held that the enforcement of the CSA against individuals who grow and use marijuana is within federal power. The Court has not overturned any States which have legalized marijuana, but the federal government can at any time still enforce the CSA against those state residents. The effect of this *stare decisis* is that employers can still have a zero-tolerance policy for marijuana in their employment contracts as it is illegal under federal law.

THE CANDIDATES

Trump/Pence:

Throughout the Trump administration, the President and his staff have made it clear that the administration does not support the legalization of cannabis at the federal level.³ However, the administration's stance regarding whether or not states should be able to legislate legalization has varied. During the 2016 election, Trump stated he would leave the issue of

1 <https://disa.com/map-of-marijuana-legality-by-state>

2 <https://www.law.cornell.edu/supremecourt/text/03-1454>

3 <https://www.youtube.com/watch?v=PUomRvvExTA>

whether or not to legalize recreational marijuana use to state legislators. In 2018, however, he pivoted away from this stance by allowing his Attorney General Jeff Sessions to rescind the Cole Memorandum which excused the federal justice system from involving itself in cases related to marijuana use in cases where use is legal at the state level.⁴ The Gardner-Trump standoff forced the Trump administration to change its policy once again when they had to withdraw their plan to increase the enforcement of federal laws banning recreational marijuana.⁵ Trump's latest move on the matter was removing funding for medical marijuana protections in the proposed 2021 fiscal year budget.⁶

Biden/Harris:

Biden and Harris have histories of being tough on drug crimes and opposing the legalization of recreational cannabis use at the federal and state levels. However, both have revised their stances on aspects of cannabis use in the last few years. Harris has been more active in discussing cannabis-related issues on the campaign trail. In 2019, Harris sponsored the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, which set out to formally legalize cannabis use at the federal level.⁷ Since joining the Biden ticket, she has walked back on the goal of federal legalization and focused on expungements for past convictions involving marijuana use and encouraging states to take up matters related to recreational marijuana use.

Biden is wary of legalizing marijuana at the federal level because of a lack of research regarding the long term health consequences of marijuana use.⁸ However,

he and Harris are committed to decriminalizing marijuana use on the federal level. Under a decriminalization policy, cannabis will remain illegal, but there will be no criminal prosecutions for persons possessing cannabis under a specified amount. Using executive action, they will reclassify marijuana from a Schedule 1 narcotic, though it will remain on the schedule of illegal substances. They will support the legalization of medical marijuana but will give states the opportunity to legislate the use of recreational marijuana. The Justice Department will refrain from launching federal prosecutions for all conduct that is legal at the state level. The pair committed to initiating an expungement process for past criminal convictions related to marijuana use. Lastly, the Biden-Harris ticket will emphasize the use of drug courts, harm reduction interventions, and treatment diversion programs as opposed to the criminal justice system for dealing with individuals with substance abuse disorders. These views are iterated within the Democratic platform.⁹

4 <https://apnews.com/article/19f6bfec15a74733b40eaf0ff9162bfa>

5 <https://www.politico.com/story/2018/04/13/cory-gardner-marijuana-522862>

6 <https://www.chicagotribune.com/marijuana/sns-tft-trump-anti-marijuana-stance-20200221-jfdx4urb5bhrf6ldtfxleopi-story.html>

7 <https://www.teenvogue.com/story/kamala-harris-joe-biden-administration-decriminalize-marijuana>

8 <https://www.theatlantic.com/politics/archive/2020/07/biden-marijuana-pot-legalize/613777/>

9 <https://democrats.org/where-we-stand/party-platform/>