



# THE JOURNAL OF GLOBAL DRUG POLICY AND PRACTICE

## **Marijuana Legalization and Federal Law: A Missed Opportunity**

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The state marijuana legalization ballot initiatives passed in November 2012 in the states of Colorado and Washington make United States the only nation in the world to legalize the production, sale and use of marijuana.

These initiatives violate federal law and are in conflict with US international treaty obligations. The recent announcement by the US Department of Justice (DOJ)(1) that it will not enforce federal law is a green light for these two states to pursue regulation of legal marijuana. In contrast, on other controversial issues the Obama administration has taken strong stands against state laws that conflict with federal law. In 2010, the DOJ brought a lawsuit against Arizona after determining that the state's immigration law, S.B. 1070, conflicted with federal law.(2) Similarly, in August, 2013, it filed suit against Texas over S.B. 14, a voter identification law, due to a conflict with federal law.(3) Where is the federal leadership on marijuana legalization? Marijuana remains an illicit drug under the Controlled Substances Act (CSA). The supremacy of federal law regarding marijuana was reaffirmed in 2005 by the US Supreme Court in *Gonzales vs. Raich*.

The guidance recently provided by the DOJ to federal prosecutors identified eight priorities for enforcement related to legal marijuana including, among others, preventing distribution of marijuana to minors, preventing diversion of marijuana to other states and preventing drugged driving and other adverse public health consequences of marijuana use.(4) Conspicuously absent from the DOJ position were answers to questions such as: How can the regulatory schemes of Colorado and Washington achieve these goals? How will these priority areas be monitored? What are the thresholds for federal intervention?

We can expect all of the dangers captured in the DOJ's eight priority areas to grow under marijuana legalization because use of a drug is greater when it is legal. Among Americans 12 and older, 52.1% used

alcohol in the prior 30 days and 26.7% used tobacco.(5) These figures vastly exceed the rate of illegal drug use; 9.2% of the population used any illegal drug, including marijuana, in the past month. Only 7.3% of Americans used marijuana in the past month. Many people do not use marijuana because it is illegal. How can anyone look at these numbers and not see the public health benefit of keeping marijuana and other drugs illegal? How can anyone not see that legalizing marijuana will lead to huge increases in marijuana use, and consequentially, increases in the negative results of marijuana use?

The federal government, which now is a passive bystander in the reckless rush to legalize marijuana, must scientifically monitor the impact of marijuana legalization in Colorado and Washington with the full understanding that the impact of these radical policies extends beyond these two states. Now is the time to collect national baseline data on every facet of life impacted by marijuana use and addiction so that the current wave of permissive marijuana policies is carefully studied to assess its impact on public health and safety, with particular interest given to the effects on youth, education, health, productivity and highway safety.

Marijuana legalization is fueled by a lavishly funded campaign decades in the making that promotes marijuana use as harmless. Not long ago, the negative health consequences of the use of alcohol and tobacco were similarly trivialized. Scientific evidence shows that marijuana is an addictive drug; about 9% of individuals who use marijuana become dependent.(6) Marijuana is responsible for 58.9% of all Americans age 12 and older, and 80.9% of all youth age 12 to 17, suffering from illicit drug abuse or dependence.(7) Marijuana was the primary drug of abuse for 73% of all teen admissions to state-funded treatment in 2010, more than any other drug, including alcohol.(8) Marijuana is harmful to the developing adolescent brain,(9) causes significant impairment(10) and contributes to deaths and injuries on the nation's roads and highways.(11)

Opposing marijuana legalization is neither cool nor politic. Those who do oppose it are mocked and ridiculed when not ignored. The individuals, organizations and coalitions that have spoken with courage and conviction in opposition to the legalization of marijuana should be applauded.

Our nation's experiment with marijuana legalization will not end with Washington and Colorado. The pro-drug lobby is following through on their plans to bring marijuana legalization to many more states through ballot initiatives and state legislation. The crisis caused by marijuana legalization will be hastened by the certain entry of major business into marijuana production and sale. The result will be powerful

economic interests that will reinforce their political interests, a pattern that mirrors the well-established alcohol and tobacco industries and lobbies.

Today's drug policy initiative is not only about the legalization of marijuana. It is about the legalization of all drugs of abuse. That is where the pro-drug lobby is headed. Every argument used in support of marijuana legalization applies to all of the other drugs of abuse. This adds weight to the importance of documenting the impacts of drug policy changes starting, but not ending, with marijuana.

If any drug, including marijuana, were to be legalized in the US, such a move should be achieved through legislative action at the federal level where the merits and the hazards of such historic action could be fully assessed and discussed. Federal action could authorize state "experiments" with drug legalization and establish data collection to assess the effects of these experiments in a systematic way. In contrast, with ballot initiatives, any thoughtful, deliberative process has been abandoned in favor of backdoor maneuvers that are easily manipulated by money and clever, deceptive media campaigns.

Drug addiction is a powerful teacher. Only when addicts "hit bottom", when the negative consequences of their drug use become intolerable, do drug addicts seek freedom from chemical slavery. Today with marijuana legalization, the US is headed to a similar fate. Perhaps only after the negative consequences of a more permissive drug policy become unmistakable and intolerable will the country sober up on marijuana.

The policy crisis triggered by marijuana legalization must be used to create a new, improved and more comprehensive drug policy. This is the time for bipartisan consideration of the larger problems of drug abuse, including the ascendant problems of designer drugs and prescription drug abuse. While the country is mesmerized by the battles over states legalizing marijuana, the modern drug epidemic is rapidly evolving to become even more menacing. The new American drug policy needs to focus on reducing drug use, including reducing marijuana use, through balanced restrictive drug policies that lower incarceration rates. (12) There are abundant new ideas to achieve those goals. Marijuana legalization is not part of those better drug policies for the future.

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### Author Biography

For more than 40 years, Robert L. DuPont, M.D. has been a leader in drug abuse prevention and treatment. He served as the first Director of the National Institute on Drug Abuse (1973-1978) and as the second White House Drug Chief (1973-1977). Following this distinguished public career, in 1978 Dr. DuPont became the founding President of the Institute for Behavior and Health, Inc., a non-profit organization dedicated to reducing illegal drug use ([www.ibhinc.org](http://www.ibhinc.org)). He is Executive Vice President and Co-Founder of Bensinger, DuPont & Associates (BDA), a leading national consulting firm dealing with substance abuse. Since 1985, he has also been Clinical Professor of Psychiatry at Georgetown University Medical School.

### Conflict of Interest Statement:

I declare that I have no proprietary, financial, professional or other personal interest of any nature or kind in any product, service and/or company that could be construed as influencing the position presented in, or the review of, the manuscript entitled "Marijuana Legalization and Federal Law: A Missed Opportunity."