

**A POLICY ANALYSIS ON THE REGULATION OF MEDICAL MARIJUANA IN THE  
UNITED STATES**

By

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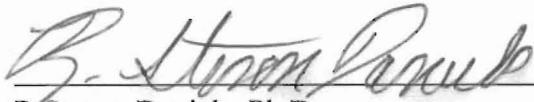
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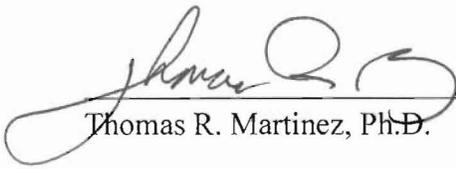


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**"It's only those who are persistent and willing to study things deeply, who  
achieve the master work."**

**— Paulo Coelho**

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## EXECUTIVE SUMMARY

The use of medical marijuana in the United States is a debatable issue due to the different perceptions the public holds. At the state and federal level, controversies also exist on marijuana's therapeutic value. Under the Controlled Substances Act (CSA), marijuana is classified as schedule I drug; meaning it may be highly abusive and has no connection with medical treatment. While the law has been in effect since 1970, sixteen states have passed medical marijuana laws allowing patients to consume the substance for certain medical illnesses. States have the power to execute these laws through the 10<sup>th</sup> Amendment. Consequently, the inconsistency of the laws has created issues between some states and the federal government. The federal government can interfere at any time with medical marijuana laws and prosecute anyone who is affiliated with the substance. In order to find a solution to this problem, the researcher has conducted in depth analysis of the existing laws and how they relate to the theory of federalism. In addition, the researcher has analyzed three alternatives and the status quo to find the most effective solution. Based on the alternatives, the researcher has selected the reclassification of marijuana to a schedule II drug as the best option. The alternative has been selected because it will create a uniform policy with the existing laws. In order for this alternative to be effective, the researcher suggests eight recommendations. The recommendations range from educating children and patients of the risks and benefits of the substance to prohibiting medically ill children from consuming the substance until more research is acquired. Additionally, the researcher advises that more research needs to be conducted on the potential effects of recreational use. This is because states may want to pass these laws in the future as it was seen in the state of California.

## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENTS</b> .....	<b>ii</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>iii</b>
<b>TABLE OF CONTENTS</b> .....	<b>iv</b>
<b>CHAPTER 1: INTRODUCTION AND BACKGROUND</b> .....	<b>1</b>
Introduction .....	1
Background.....	2
Statement of the Problem.....	4
Methods & Procedures of the Study .....	4
Why Is This Study Important?.....	4
<b>CHAPTER 2: WHY IS MEDICAL MARIJUANA A POLICY ISSUE? .....</b>	<b>6</b>
Federalism .....	6
The Civil War .....	7
The Great Depression .....	8
The 1960s .....	9
New Federalism.....	9
Three Important Principles of Federalism .....	10

The Controlled Substances Act.....	12
California Compassionate Use Act.....	13
Conant v. Walters (2000).....	13
United States v. Oakland Cannabis Buyers’ Cooperative (2001) .....	14
The Commerce Clause.....	15
Wickard v. Filburn (1942) .....	15
United States v. Sullivan (1948) .....	15
United States v. Lopez (1995) .....	16
United States v. Morrison (1994) .....	16
Medical Marijuana and Interstate Commerce.....	17
Gonzales v. Raich (2005).....	17
Stakeholders Involved with the Issue.....	18
Potential Solutions to Resolve the Problem.....	18
<b>Chapter Three: Discussion of Policy Alternatives.....</b>	<b>20</b>
Description of Alternatives.....	20
Reclassifying Marijuana as a Schedule II Drug.....	21
Advantages .....	21
Disadvantages.....	22
Possible Outcomes.....	23

Reinterpreting the Commerce Clause .....	24
Advantages .....	24
Disadvantages .....	25
Possible Outcomes.....	25
Abolishing All Medical Marijuana State Laws.....	26
Advantages .....	27
Disadvantages.....	28
Possible Outcomes.....	29
Status Quo: Leaving the Policies in Place .....	30
Advantages .....	30
Disadvantages.....	30
Possible Outcomes.....	31
<b>CHAPTER FOUR: SELECTION OF THE BEST ALTERNATIVE .....</b>	<b>32</b>
Criteria for Selecting Alternatives .....	32
Applying the Principles to the Proposed Alternatives .....	33
Alternative One: .....	33
Alternative Two:.....	35
Alternative Three:.....	37
Status Quo: .....	39

Selection of the Best Alternative ..... 40

**CHAPTER FIVE: SUMMARY, RECOMMENDATIONS, AND**

**CONCLUSION.....42**

    Summary..... 42

    Recommendations For Implementing the Alternative ..... 43

    Conclusion ..... 44

**REFERENCES .....46**

**APPENDIX A: IRB APPROVAL .....50**

**APPENDIX B: STATES THAT HAVE LEGALIZED MEDICAL MARIJUANA ..... 51**

## CHAPTER 1: INTRODUCTION AND BACKGROUND

### Introduction

Marijuana (also known as cannabis) is the most popular illicit substance used in the United States. According to the United Nations World Drug Report of 2010, approximately 29.5 million people reported using it at least once in the year of 2008 (p. 194). Currently, sixteen states have legalized medical marijuana (Procon, 2011). In 2010, proposition 19 appeared on the ballots of California, but was defeated by 53.5%. The proposal would have granted the state the authority to regulate and tax marijuana for recreational use (Sanchez, 2010). Under federal law, marijuana is a schedule I drug. This means it is an illegal substance with a high potential for abuse and has no connection with medical treatment (Okie, 2005). Based on the existing policies, a question arises: should the federal government have the power to determine the legalization of marijuana or should the power be granted to the states?

The purpose of this paper is to conduct a policy analysis of the regulation of marijuana in the United States and to identify a solution because there is a discrepancy between federal and state laws. This paper has five parts. Part one will discuss the background of the problem, the methods used to come up with a solution, and the importance of the study. Part two will cover the statement of the problem, the major stakeholders, and potential solutions. Part three will examine the advantages and disadvantages for every alternative. Part four will measure the success of each alternative and based on a set of principles, one alternative will be selected. Lastly, part five will cover the summary and conclusion of the study.

## **Background**

The use of marijuana in the United States can be traced back to the 1840s when physicians would prescribe it as a remedy for illnesses such as neuralgia, rheumatism, tetanus, gout, uterine hemorrhage, and convulsions. The drug was recognized by Pharmacopoeia, the official list of accepted medicinal drugs in the United States. However, as the years passed, marijuana gained a negative reputation for its recreational use. During the 1910s, many Mexican immigrants migrated to Texas and Southern California. After long days of work, they would smoke marijuana as form of relaxation. The public began to notice this and associated Mexican immigrants with marijuana use (Musto, 1991). As a result, new laws were enacted by the federal government to control the abuse of marijuana and opium. Several laws were passed including the 1906 Pure Food and Drug Act, the 1914 Harrison Act, and the 1920 Volstead Act (Pacula, Chriqui, Reichmann &McElrath, 2002).

When the Great Depression hit America, there was a major decline in employment. The public became fearful of Mexican immigrants and their association with marijuana. They developed the idea that the substance was dangerous when smoked, causing people to commit crimes (PBS, 2011). Newspapers and the media reinforced this perception covering stories of people committing violent crimes while under the influence of the drug (Pacula, Chriqui, Reichmann &McElrath, 2002).

By this time, nearly all states had passed laws outlawing possession of marijuana. In 1937, the federal government enacted the Marihuana Tax Act. The act did not make the substance illegal, but it required physicians to register with the federal government and pay annual tax fees. Those who did not use it for medicinal purposes would be penalized with a fine. As a result of the new Act, the number of physicians who prescribed it declined. By

1942, the drug was removed from the Pharmacopeia list (Pacula, Chriqui, Reichmann &McElrath, 2002).

In 1970, the Controlled Substance Act (CSA) was ratified labeling marijuana as an addictive dangerous drug (Stern &DiFonzo, 2009). Since then, the federal government has enacted new policies prohibiting the use of the substance and prosecuting those who violate the law. During the Bush Administration, the federal government prosecuted those who cultivated, sold and used the substance for medicinal purposes (Stern &DiFonzo, 2009). Several marijuana dispensaries in California were raided by the Drug Enforcement Administration (DEA). In 2005, the Supreme Court ruled in favor of the Bush Administration declaring that the federal government has the power to prosecute individuals who use medical marijuana under the Commerce Clause (Stern &DiFonzo, 2009). The ruling did not overturn laws for states who have legalized medical marijuana, but it announced that people who use it for medicinal purposes are running the danger of being prosecuted by federal agencies such as the Federal Bureau Investigation (FBI) and the Drug Enforcement Administration (DEA). In addition, state laws would not be able to defend those who are prosecuted under federal law (Barret, 2009).

The ruling supported Bush's goal of ending medical marijuana. Raids continued to occur until the second week of Obama's presidential term (Johnston, 2009). In 2009, officials from the Justice Department announced that there will be a stop to the DEA's anti-medical marijuana prosecutions. The officials proclaimed that President Obama was in support of its use and no arrests would be conducted for individuals who complied with their state laws (Barret, 2009)

## **Statement of the Problem**

Conflicts about medical marijuana exist between states and the federal government because of the lack of uniformity between federal and state law. Because of the federal government's inconsistency in applying federal marijuana laws, no guarantee exists that state laws and regulations will protect medical marijuana cultivators and users. At any time, the federal government may prosecute those who are following their state laws.

## **Methods & Procedures of the Study**

All information obtained for the study was gathered from scholarly databases such as Google scholar, JSTOR, EBSCOHost, LexisNexis and so forth. The researcher has also attained data from government websites, websites that are in favor or in opposition of medical marijuana, and newspapers. In order to find a solution to the problem, the researcher will conduct a policy analysis of the regulations that exist in states that have legalized medical marijuana and the regulations of the federal government. In addition, the investigator will also conduct an analysis of the Commerce Clause and how this clause allows the federal government to interfere with state medical marijuana laws. At the end of the research, one solution will be proposed to resolve the problem along with recommendations on how to implement it.

## **Why Is This Study Important?**

The research will help in developing a solution because loopholes exist with marijuana policies. The investigator will help in clarifying why the federal government does not view marijuana as a medicinal drug and why at certain points in time, federal regulations could come into play criminalizing those who use the substance. The study will also help in understanding why the use of marijuana is such a debatable issue and what health risks may

be associated with its use. The study is important because patients, physicians, marijuana vendors, and the public are affected by the laws. The study is especially significant to medically ill patients that rely on the substance as a form of medical necessity. Overall, the information obtained for this paper will contribute to the study of the current marijuana policies and the conflicts of power between some states and the federal government. In addition, more scientific research needs to be conducted by professional researchers who currently have difficulties in obtaining permission from the federal government.

## **CHAPTER 2: WHY IS MEDICAL MARIJUANA A POLICY ISSUE?**

Policy problems can arise when states and the federal government do not reach an agreement on the problem definition for certain policy issues such as medical marijuana laws. In order to understand the issue better and to identify solutions, the researcher will introduce the concept of federalism and how it applies to the conflict between states and the federal government. The researcher will then present how, under the Controlled Substances Act (CSA) and Commerce Clause, the federal government has the power to interfere with medical marijuana laws. At the end of the literature review, the researcher will identify the major stakeholders who are influenced by the policy and potential solutions to the problem.

### **Federalism**

The separation of powers between states and the federal government was created by the founding fathers of the nation. The framers created a government system where states and the federal government have the power to enact new policies and regulate those that are already in place. However, controversies exist on how much responsibility should be granted to the federal government and how much should be left to the states.

During the late 1700s, the responsibilities of states differed from the federal government. States were responsible for transportation and educational policies whereas the federal government was responsible for national defense issues and foreign trade (Kraft & Furlong, 2010). This continued in the 1800s as state governments spent more money on internal improvements than local and federal government. It was also very common for states to join together with business entrepreneurs such as private banks, industrial, and transportation firms. Both parties were equally responsible for hiring employees and managing the project plans. During the 1850s, states used their chartering privileges to

directly control these investments. Entrepreneurs that were interested in making business needed the approval from state governments and were required to abide by a certain set of conditions in order for their businesses to operate. States were also responsible in dealing with noneconomic issues such as safety, health, moral behavior, immigration, and marriage. These powers are known as “police powers” that were ingrained by both the Anglo-American common law and the Central European jurisprudence and supported by the U.S Constitution. The Tenth Amendment reinforced these powers affirming “...The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people.” This gave power for state governments to regulate industrial businesses, labor relations, commerce, and public welfare such as gambling, prostitution, drinking, and so forth (Gerstle, 2010).

### ***The Civil War***

The victory by the North in the Civil War increased the influence of federal versus state power and began the steady increase in federal authority. Two important Amendments were ratified challenging the notion of state rights. The Thirteenth Amendment abolished slavery and the Fourteenth Amendment granted slaves citizenship and civil rights. From the late 1800s to the beginning of the 1900s, many states began to exercise their power in different areas. They focused primarily in controlling and changing the laws of individual behavior such as the prohibition of alcohol, segregation between whites and people of color, prostitution, polygamy, interracial marriage, and contraception. The federal government supported these regulations by also banning these rights at the federal level. Polygamy, birth control through mail service and the transportation of women through state lines for sexual intentions were forbidden. Although the power of the federal government was increasing,

states were still responsible in enacting moral life laws because of their “police powers.” Hence, a number of court cases involving civil rights were brought to the Supreme Court such as the case of *Plessy v. Ferguson* questioning segregation between whites and people of color. The Justices ruled that the “police powers” grant state governments to act on behalf of the best “welfare” of its citizens. Therefore, segregation was constitutionally acceptable in businesses (such as railroads) designed for the white population. These rights were also seen in matters involving interracial marriage. During the mid-1800s, the right to interracial marriage ascended giving individuals the power to choose who they wish to marry. However, the rise of liberation, urbanization, and immigration created fears of social misconduct involving sexuality and marriage. State laws began to create stricter regulations banning miscegenation. In 1882, the Supreme Court affirmed that states have the power to carry out these laws through its “police powers.” Consequently, from 1880 to 1920, twenty states created laws against interracial marriage (Gerstle, 2010).

### ***The Great Depression***

During the Great Depression, there was a further shift in power from the states to the federal government. President Roosevelt’s New Deal was created to improve the economic status of the United States. In 1937, the Supreme Court reinterpreted the Commerce Clause to allow Congress to regulate interstate commerce in states (Kreit, 2003). The reinterpretation of the Clause gave the federal government the power to protect the welfare of citizens which it had previously been left to the states (Gerstle, 2010). The federal government began working with state governments and new programs and policies were implemented. The collaboration between states and the federal government created the Federal Emergency Relief Administration (FERA). Under this administration, states were

given loans to operate assistance programs. States were required to give up to three dollars for every dollar that the federal government contributed. Other organizations were also created such as the Social Security Administration.

### ***The 1960s***

During the 1960s, the civil rights movement generated a change weakening state police powers. This was due to the existing laws against minorities such as the Jim Crow law. Hence, the federal government interfered with state laws to make changes against racial discrimination. The 1964 Civil Rights Act was the first federal regulation prohibiting states to racially discriminate against minorities. In 1965, the Voting Rights Act granted the federal government the right to ban discriminatory voting practices against African Americans. The 1965 Medicaid Program provided incentives to states to provide medical assistance to the poor and underprivileged. The change in power made by the federal government created great improvements for racial equality in America. Individuals came forward stressing their fundamental constitutional rights such as the right to marry any person, the right to abortion, the right to privacy, and the right to equal opportunity (Gerstle, 2010).

### ***New Federalism***

In the 1970s, the concept of “New Federalism” was introduced by Republicans during Nixon’s Presidential term. Republicans wanted to reestablish state powers that have been previously been diminished during President Roosevelt’s “New Deal.” Conservatives on the Supreme Court were also favor of this new type of federalism which was shown during their rulings in the late 1990s attempting to grant more power to states. However, the success of federalism was rather moderate as compared to the late 1800s (Gerstle, 2010)

### **Three Important Principles of Federalism**

In the article, “Medical Marijuana and the Virtues of Federalism,” Pickerill and Chen presented three of the most important virtues of federalism. The first one is the power of the states to experiment and create policies, the second is the diversity of creating new policies, and the third is the protection of individual rights and liberties. Based on the three principles, the authors analyzed each of them in relation to the federal government and medical marijuana policies (2007).

The first principle of federalism grants states the power to experiment with new policies. In every state, laws differ according to the needs and perceptions of the public. Under federalism, states are given the power to implement new policies that may not exist in other states. If the policy fails, the state is only responsible for the policy and not the country as a whole. However, if the policy shows to be effective, other states may implement the same policy to resolve the same type of issues. In addition, states are also able to assess the effectiveness of a policy due to the feedback they may receive from the public and local governments. If the policy is not resolving the issue, the public is able to lobby against the government proposing new solutions (Pickerill & Chen, 2007).

Within regards to medical marijuana, states have experimented with implementing regulations allowing its use. In 1996, the California Compassionate Use Act was enacted by the state legalizing medical marijuana. The Act was very broad allowing its use for any conditions that marijuana may relieve. As a result, other states passed the use of medical marijuana in that same year. However, each state’s regulations differ depending on their perceptions of the degree of medicinal value. Because federalism allows states to experiment

with new policy regulations, Pickerill and Chen argue that states should be given the power to regulate marijuana policies. This is because state governments are closer to the citizens of the states. In addition, states are responsible for most of the drug prosecutions (2007).

The second principle of federalism protects the diversity of policies among states. Every state has different policies reflecting the views of that particular population. For every state, the public is given the power to vote on behalf of what policies they choose to pass. If the majority does not favor the policy, the regulation does not go into place. In addition, citizens have the freedom of relocating to other states where they may find certain policies more favorable. By allowing states to legalize marijuana, citizens will have more influence over the policies that are being implemented in their states. The Bill of Rights was created to protect the rights and freedom of individuals. However, by not allowing states to regulate medical marijuana, states are not given the power to protect medical marijuana users that are abiding by their criminal laws (Pickerill & Chen, 2007).

The third principle of federalism protects the rights and liberties of individuals. The Constitution separated the power of state and federal government in order to regulate it and protect the rights of individuals. In addition, federalism allows for states to protect individual liberties that reflect the cultural and societal values within jurisdiction. For this reason, the public should be held responsible on what regulations and values the government should provide. By allowing the voters to choose the policies they want to pass, the state is complying with their citizen needs (Pickerill & Chen, 2007).

## **The Controlled Substances Act**

One of the policy issues between states and the federal government is the legalization of marijuana. In 1970, the Federal Controlled Substances Act (CSA) was created to reduce drug abuse in the United States. This was due to President Nixon's "War on Drugs" which was created to end illicit drug trade. The CSA classified illicit substances into five classes ranging from those who do not have medical value to those that do. Marijuana was labeled as a schedule I drug with no medicinal purpose. The ruling created disagreement across drug policy activists who supported the legalization of medical marijuana. The dramatic increase of its recreational use during the 1960s led to the mishap of its medicinal treatment (Kreit, 2003).

Because the CSA was the first policy created labeling marijuana as a dangerous drug, some state governments did not know what steps to take in order for the national government to reclassify the substance. Some created Therapeutic Research Programs (TRP) which were federally approved under the Food Drug Administration Investigational New Drug Program. The programs allowed physicians to prescribe marijuana for patients that were participating in the study (Kreit, 2003). From 1978 to 1981, 22 states created TRP's. However, only eight states were able to operate them because of the stringent regulations by the federal government. Furthermore, six other states changed the classification of marijuana in their state's constitution. This allowed physicians to prescribe it for medical purposes. However, by the mid-1980s, there was a stop to the medical marijuana movement. Many of the laws had been removed or expired. This was because states believed that the rescheduling of marijuana would eventually take place (Pacula, Chriqui, Reichmann & McElrath, 2002). Organizations in favor of marijuana such as the Alliance for Cannabis Therapeutics (ACT)

and the National Organization for the Reform of Marijuana Laws (NORML) were petitioning to have it rescheduled as a schedule II drug (Herman, 2002). In addition, the Federal Drug Administration (FDA) approved *marinol*, a pharmaceutical drug that it is used to cure nausea for cancer and HIV/AIDS patients (Pacula, Chriqui, Reichmann & McElrath, 2002). The drug contains tetrahydrocannabinol (THC) which it is the active ingredient found in marijuana (Cohen, 2006). The drug is currently categorized as a schedule III under the CSA (Kane, 2001). By the mid 1990's, some states began passing laws re-allowing the use of medical marijuana even though under federal law, medical marijuana remained classified as a substance I (Stern & Di Fonzo, 2009).

### **California Compassionate Use Act**

In 1996, proposition 215, also known as the California Compassionate Use Act, passed allowing medically ill patients to cultivate and possess marijuana for medicinal purposes. The proposition allowed physicians to recommend marijuana for patients that needed it as a form of remedy. Patients were issued medical marijuana cards so they could purchase the marijuana in dispensaries (Herman, 2002). The implementation of this law brought two important cases to the Supreme Court questioning the legitimacy of these laws.

### ***Conant v. Walters (2000)***

In 1996, a few months after California's proposition 215 passed, the White House National Drug Control Policy declared that physicians who recommend or prescribe marijuana may face criminal charges under the CSA. Furthermore, the physicians ran the risk of having their practitioner's registration revoked impeding them from prescribing controlled substances. In response to the allegations, a group of physicians, organizations, and patients filed a lawsuit in the United States District Court for the Northern District of California. The

plaintiffs sought to obtain a preliminary injunction prohibiting the federal government from enforcing any laws that would punish physicians for discussing with their patients the benefits and dangers of medical marijuana (Christenson, 2004).

On April 30, 1997, a preliminary injunction was granted by the District Court. The court declared that federal government cannot prosecute or revoke registrations for physicians who recommend medical marijuana because it violates their First Amendment rights. On June 20, 2001, the federal government filed an appeal to the Ninth Circuit Court requesting a revision of the case. The Circuit declared its support for the decisions made by the lower courts. On June 7, 2003, the federal government requested a writ of certiorari from the Supreme Court to review the decision. However, the writ was denied leaving the injunction in place (Christenson, 2004).

***United States v. Oakland Cannabis Buyers' Cooperative (2001)***

In 1998, the federal government filed six lawsuits against six marijuana dispensaries in the state of California. The federal government claimed that the defendants violated the CSA although medical marijuana was legal in California. In addition, distributing, possessing, and selling marijuana violated the CSA 21 U.S. C 841(Herman, 2002).

The cases were sent to the United States District Court for the Northern District of California. The District Court decided on a preliminary injunction and rejected the Cooperative's motion of permitting the distribution of marijuana as a "medical necessity." The United States Court of Appeals for the Ninth Circuit later overturned the ruling of the Court and instructed to reconsider the conditions of allowing the use of marijuana as a "medical necessity." The District Court approved the motion in modifying the Act to include a "medical-necessity" exemption. On the meantime, the federal government requested a

certiorari to review the Court of Appeals' decision. Based on the Certiorari, the Supreme Court overturned the ruling stating that a "medical necessity" exception to the Act did not clearly eliminate such an exemption as it was clearly stated in the Act that marijuana had no therapeutic benefits (Herman, 2002).

## **The Commerce Clause**

### ***Wickard v. Filburn (1942)***

In 1937, the Supreme Court ruled in favor of the National Labor Relations Act which made it constitutional for Congress to regulate interstate commerce among states. The ruling created a shift from the previous commerce clause principles. The decision allowed President Roosevelt to enforce the "New Deal" (Newbern, 2000). In 1942, the case of *Wickard v. Filburn* granted Congress more power through the Commerce Clause. Mr. Filburn, a wheat farmer argued that he should not be enforced to abide by the Agricultural Adjustment Act of 1938. The act was created to regulate the price of wheat in intrastate production. Mr. Filburn explained that the extra wheat he produced was to feed his animals and for personal use. However, the court declared that Congress has the power to enforce the Act under the Commerce Clause. While the wheat was solely being used for his home, under the Act, Congress has the authority in regulating "intrastate activity" (Kreit, 2003).

### ***United States v. Sullivan (1948)***

In 1948, the case of *United States v. Sullivan* granted more power to Congress in relation to interstate commerce. Mr. Sullivan, a retail pharmacist, was being prosecuted for purchasing Sulfathiazole pills from a vendor of the state he resided. After obtaining them through interstate shipment, he resold the pills without the required labels for dosage and

warnings. The court ruled in favor of the conviction because under the Commerce Clause, the court has the power to regulate “interstate shipment” (Kreit, 2003).

***United States v. Lopez (1995)***

In 1995, a court case questioned how much power Congress has under the Commerce Clause. Mr. Lopez, a twelfth grader, brought a handgun to his high school. The gun was found by school staff and the boy was arrested by the police and was charged under state law. However, on the following day, the charges were dropped and Mr. Lopez was charged under federal law for violating the Federal Gun Free School Zones Act of 1990 (GFSZA) section 922(q). Mr. Lopez appealed the charges arguing that the federal government does not have the authority to legislate for public schools and the possession of a gun relates to state criminal laws, not federal laws. The case was taken to the Supreme Court and the ruling declared that GFSZA was unconstitutional as it surpassed Congress’ powers under the Commerce Clause. Gun possession in a public school does not affect interstate commerce as the federal government had argued (Newbern, 2000).

***United States v. Morrison (1994)***

In 1994, the case of *United States v. Morrison* also limited the powers that Congress is able to exercise under the Commerce Clause for gender motivated crimes. Christy Brzonkala, a student from the Virginia Polytechnic Institute, accused another student, Antonio Morrison, of raping her. Brzonkala reported him to the school and filed a petition against him under the university’s disciplinary policies. Mr. Morrison admitted to the crime and was ordered to be suspended from school for two semesters. However, after another appeal and conviction and another appeal, the school did not punish him. Because the school did not take the appropriate action, Brzokala sued under the Violence Against Women Act of

1994. The act was created by the federal government for victims of gender motivated crimes. Mr. Morrison challenged the petition arguing that it was unconstitutional under the Commerce Clause. The Supreme Court ruled in favor of Mr. Morrison stating that under the Commerce Clause, the federal government does not have power to deal with federal civic remedies (Newbern, 2000).

### **Medical Marijuana and Interstate Commerce**

#### ***Gonzales v. Raich (2005)***

In 2002, the case of *Gonzales v. Raich* marked the new powers Congress is able to exercise in regards to medical marijuana under the Commerce Clause. Angel Raich and Diane Monson were prosecuted for consuming medical marijuana. Both women consumed the substance to alleviate the pain of their medical illnesses. The marijuana was prescribed by their physicians because it was the only substance that appeared to alleviate their pain. In addition, Raich was granted permission by her physician to cultivate marijuana plants for medicinal use. In 2002, the Drug Enforcement Agency (DEA) took possession of the marijuana plants because it is illegal to grow marijuana plants under the CSA (Pushaw, 2005).

Both women sued the government arguing that the CSA violated the power of Congress under the Commerce Clause. This is because the marijuana plants were only being cultivated for personal use and under state law, it was constitutional. In addition, not allowing the use of marijuana to alleviate their pain violated the Due Process Clause, the Ninth Amendment, the Tenth Amendment, and the medical necessity doctrine (Pushaw, 2005). In 2005, the Supreme Court ruled that the CSA did apply to this case although the women were abiding by their state laws. The majority of the decision was based on *United States v. Lopez* and *United States v. Morrison* (Pushaw, 2005).

Overall, the court declared that the previous cases of *Lopez* and *Morrison* provided Congress the authority in controlling medical marijuana laws. However, the justices were not able to reach an agreement if the activity had a “commercial” or a “substantial effect” on interstate commerce (Pushaw, 2005). The case of *Gonzales v. Raich* caused an extensive debate on whether the power should be left to the states or the federal government. In addition, while the medical marijuana issues were resolved, no recent cases have occurred regarding the current classification of the Commerce Clause (Stern & DiFonzo, 2009).

### **Stakeholders Involved with the Issue**

There are multiple stakeholders that are involved with the medical marijuana debate. One of the major stakeholders is the Supreme Court. The Justices are responsible for interpreting the U.S Constitution and making the ultimate decisions on policy issues. The states are also stakeholders because they represent their citizens and also create policies that help solve state problems. The federal government is also a stakeholder because it has the power to implement laws that states must abide by. Medical marijuana patients, physicians, and dispensaries are also stakeholders because they are running the risk of facing federal criminal charges although abiding by their state laws. Activist groups in support of or opposed to medical marijuana laws are also stakeholders because they influence the public of their perceptions towards the issue. Lastly, the public and taxpayers are also major stakeholders because their votes determine whether the policies should be implemented.

### **Potential Solutions to Resolve the Problem**

There are four potential solutions that may help in solving the medical marijuana issue. The first is that the federal government should reevaluate if marijuana should remain as a schedule I drug. This is because its medicinal usage can be traced back to prehistoric

times (Stern & DiFonzo, 2009). The second potential solution is for medical marijuana states to join together and take legal action against Congress. The Supreme Court will have to re-examine the interpretation of the Commerce Clause to determine if Congress has the power to regulate medical marijuana laws. As the years have passed by, the Clause has been reevaluated in different ways that the Supreme Court has no clear assumption on whether the cultivation of marijuana for personal use affects interstate business. The third potential solution is for the federal government to remove all state medical marijuana laws. The removal of the laws will make any use of marijuana illegal. Lastly, the fourth solution is the status quo which is to leave the current policies in place and do nothing to resolve the policy issue.

### Chapter Three: Discussion of Policy Alternatives

As described in chapter two, there are four alternatives that may provide a solution for the marijuana problem. An in depth analysis of the alternatives will be performed in this chapter to determine what solution will work best. Based on the analysis, the researcher will select the best one to resolve the problem.

#### Description of Alternatives

- Reclassifying marijuana to a schedule II drug. This policy will allow physicians to prescribe it legally without facing federal prosecutions. In addition, the Food and Drug Administration (FDA) will allow researchers to conduct studies on its therapeutic value without stringent regulations for schedule I drugs. Recreational use of marijuana will remain illegal.
- For medical marijuana states to join together and take legal action against Congress. The Supreme Court will have to reevaluate the interpretation of the Commerce Clause. This will determine if locally grown marijuana “substantially” affects interstate commerce. The reinterpretation will conclude if states or the federal government have the power to regulate medical marijuana laws.
- Abolishing all state medical marijuana laws by the federal government. State medical marijuana laws will become unconstitutional and forbidden. Those who are found using the substance will be prosecuted under state laws.
- **Status Quo:** Leaving the current policies in place; marijuana will continue to remain in its current classification. Medical marijuana users and physicians face the risk of being prosecuted under federal law.

## **Reclassifying Marijuana as a Schedule II Drug**

The classification of marijuana as a schedule I drug makes it difficult for researchers to attain consent from the FDA. While researchers may apply for permission, applications are rarely approved (Weiss, 1988). The current classification also restricts marijuana from being used for medical purposes (Schneider, 2005). One alternative is for the federal government to reclassify the substance as a schedule II drug. Under this category, substances may still have high possibilities for abuse, but have been approved by the FDA for medical usage (Bridget, 2001). The policy will allow states to regulate medical marijuana laws while restricting the use of recreational marijuana.

### ***Advantages***

The implementation of this policy will allow physicians to prescribe the substance without facing the risk of having their registrations revoked. Under the Controlled Substances Act (CSA), physicians are not allowed to prescribe controlled substances unless they obtain a registration with the Drug Enforcement Agency (DEA). The registration allows physicians to prescribe substances that have been approved to have medical value. At the moment, physicians are only allowed to recommend marijuana, but cannot prescribe it because it has not been approved by the FDA (Christenson, 2004). The implementation of this alternative will change the current regulations of the CSA.

The alternative will also allow patients to consume the substance without facing federal prosecutions. There have been numerous of court cases brought to the state courts and the Supreme Court by patients who rely on the substance as a form of survival. By approving the substance, there will be no need to take legal action as patients will be allowed to consume the substance. The reclassification will also permit researchers to conduct studies

on its medical value without the strict regulations for schedule I drugs. For example, researchers must not only attain permission from the FDA, but also from the National Institutes of Health (NIH). The organization is the only official federal source that supplies marijuana for research purposes. However, the organization only provides marijuana to researchers who also meet their criteria for funding of the study (Clark, 2000). Because of these strict regulations, researchers have difficulty in conducting studies.

### ***Disadvantages***

While some studies show that marijuana has medicinal value, other studies show contradictory findings. Research suggests that marijuana weakens the immune system and affects the lungs due to hazardous toxins found in the smoke. Furthermore, the substance may increase health risks for certain medical conditions such as cardiac disease, psychiatric disturbances, cancer, vertigo, obesity, and pregnancy. Heavy marijuana users also suffer psychological problems such as short term memory loss, paranoia, mood changes, anxiety, and depression (Seamon, Fass, Fleichti & Shraie, 2007). The risks associated with marijuana may increase health problems to patients who are already facing medical illnesses.

Because there is no certainty if marijuana is an addictive drug, patients are also running the risk of becoming addicted to the substance. Many substances that have been approved by the FDA have been illegally abused for recreational use. The FDA is trying to implement better programs to control prescription drug abuse (Dresser, 2009). Allowing the use of marijuana may create more challenges to the FDA in reducing drug misuse. In addition, researchers may find it difficult to conduct studies because marijuana plants differ in Tetrahydrocannabinol (THC) potency and by its classification (Weiss, 1988). The variation levels will make it difficult to determine the effective dosage of smoked marijuana

(Clark, 2000). Lastly, the reclassification may also make it legal for children to consume the substance for medical purposes. Debates may arise as to whether parents have the right in giving the substance to children who are medically ill and if physicians should be allowed to prescribe it based on certain medical situations (O'Brien, 2002).

### ***Possible Outcomes***

Based on the analysis, there are multiple outcomes that may result from reclassifying marijuana as a schedule II drug. For example, the reclassification may send the wrong message to the public. The public may assume the drug is not abusive and acceptable for any type of use. This may create an increase of recreational use (Barnes, 2000). Another outcome is that some states may want to move forward in legalizing it for personal use. In 2010, proposition 19 was presented in the ballots of California allowing the distribution and possession of all marijuana use. The proposition was rejected by 53.5%. However, the policy will be reintroduced in the ballots in 2012 (Sanchez, 2010).

Another outcome is that its rescheduling may not be enough for the federal government to make it fully legal. The government may be selective on what types of illnesses are acceptable and which ones should be prohibited. Presently, states that have passed medical marijuana laws choose what illnesses are acceptable. If the federal government interferes, patients that need the substance may not be allowed to consume it in the future. In addition, the federal government may require states to implement stricter penalties for people that are found abusing the substance; this may create an increase of marijuana prosecutions. Furthermore, the public may not find the rescheduling favorable especially in states that have not yet passed medical marijuana laws. Their concerns may be the potential effects it may have on the youth.

Lastly, the public may not agree at allow children to consume the substance although it may be for medical purposes. Debates on whether children should be allowed to use marijuana may be brought to the Supreme Court. Each case may be handled differently depending on the circumstances such as illnesses and dosages of the substance.

### **Reinterpreting the Commerce Clause**

The United States operates under the federalism theory as federal, state, and local governments overlap. Each part of government is aware of the limits and powers each must operate. Generally, states have the authority to legislate laws concerning health, welfare, and safety of the public (also known as “police powers”). However, the federal government has the control to interfere with these powers through the Commerce Clause. The Clause gives Congress the power to regulate medical marijuana laws since marijuana may be distributed through interstate commerce. The current interpretation of the Commerce Clause has created a number of court cases brought to the Supreme Court because there is no certainty if the cultivation of marijuana for personal use affects interstate activity. The rulings of the cases have complicated the issue creating controversy and mixed results (Seamon, Fass, Flechti & Shraie, 2007). One alternative is for states with medical marijuana laws to file suit against the United States to settle the question of appropriate authority. The Supreme Court will have to reevaluate the interpretation of the Commerce Clause to determine if marijuana laws “substantially” affect interstate commerce.

### ***Advantages***

The decision made by the Supreme Court will determine if states or the federal government have the power to regulate medical marijuana policies. This will help to settle the current medical marijuana issue as the proper policies will be implemented by the

winning party. Currently, there is no uniformity with the laws. At any time, the federal government can interfere and prosecute people in states that have passed medical marijuana laws. The implementation of this policy will end the ongoing discrepancies of the laws. The Supreme Court is the ultimate decision maker and will base its decision on past court cases and most importantly, the U.S Constitution.

### ***Disadvantages***

Because the Commerce Clause has been interpreted in different ways, the Justices may find it difficult to reach a decision. The notion of *stare decisis* requires courts to base decisions on similar court cases. However, when looking at past court cases involving the Clause, the cases are not similar. For example, *Lopez* and *Morrison* dealt with violent crimes whereas *Wickard* and *Raich* dealt with economic acts (Schneider, 2005). The Justices will have to create an extensive study on these past court cases due to the vagueness of the Clause. Their verdict will shape the new era of the Commerce Clause which could affect future decisions regarding other types of crimes. In addition, the federal government may continue to prosecute medical marijuana patients and vendors during the time it is being decided by the Supreme Court.

### ***Possible Outcomes***

Based on the ruling, the Justices will decide who has the power to regulate medical marijuana laws. The results could either go in favor or in opposition of the current laws that exist in some states. If the Supreme Court rules in favor of the states, medical marijuana will remain legal in states that have passed these laws. States will have the power to regulate the use of marijuana and distribution. In addition, states that have not yet passed these laws may find the ruling as an opportunity to present the policy to their citizens. This may create an

increase of states allowing the use of medical marijuana. The ruling will also limit the federal government from prosecuting people that are abiding by their state laws. This means that no prosecutions will be made to medical marijuana patients, physicians, and vendors.

If the Supreme Court rules in favor of the federal government, states will no longer be able to regulate medical marijuana laws. The federal government will intervene and force states to remove the existing laws. Medical marijuana patients, vendors, and physicians will also no longer be able to have any affiliation with the substance. This may create problems for physicians who are allowed to recommend the substance through the First Amendment. Because the use of medical marijuana has been used for so many years, the decision of the Supreme Court may also create legal suits by patients who need the substance as form of survival. The federal government will have to decide case by case who is able to consume the substance. Patients will have to receive approval from the federal government through an extensive procedure due to its classification.

### **Abolishing All Medical Marijuana State Laws**

In the court case of *Gonzalez v. Raich*, the justices ruled in favor of Congress stating that the CSA is a constitutional power that the federal government is able to execute through the Commerce Clause. However, Supreme Court did not discuss the legitimacy of California's current medical marijuana laws or if the laws should be prohibited (Seamon, Fass, Flechti & Shraie, 2007). Because the Justices did not touch on this issue, states have continued to pass medical marijuana laws which are allowed under their state constitutions. On May 13, 2011, Delaware was the most recent state that passed these laws (Procon, 2011). In order to solve the policy problem, the researcher proposes for Congress to remove all state medical marijuana laws. Under this policy, any person who uses the substance either for

recreational or personal use will face criminal charges. States that have passed medical marijuana laws will not be allowed to protect their citizens from these prosecutions.

### *Advantages*

The Federal government's opposition to marijuana is to protect the public from using and abusing substances (Stern & DiFonzo, 2009). According to the *National Survey on Drug and Health*, marijuana is the most abused substance in the United States. In the year of 2009, approximately 2.4 million people ages 12 and older reported abusing it at least once for that year (Substance Abuse and Mental Health Administration, 2009). The implementation of this policy will help the federal government to impose stricter regulations in order to continue to protect youths from abusing drugs. If states continue to pass medical marijuana laws, youths may develop the idea that the substance is not as harmful as it is alleged.

The alternative will also continue to support the federal government's policy on zero tolerance towards illegal substances (Clark, 2000). Since the introduction on the "War on Drugs," the federal government has worked hard to end illicit drug trade by creating harsh penalties. The current federal penalties are about 10 to 20 times higher than state sentences for identical crimes (Newbern, 2000). The policy will also continue to be approved by most American voters. When it involves drug policies, most Americans are in favor of policies that end drug abuse and protect public safety. Lastly, the policy will end all medical marijuana use. Dispensaries and physicians will no longer be allowed to recommend, sale, and distribute marijuana. People who are found using the substance will face state prosecutions.

### *Disadvantages*

While most Americans tend to be in favor of implementing laws ending illegal drug use, the 2005 Gallup Study showed that 78% of Americans supported medical marijuana laws (Stern & DiFonzo, 2009). The results indicate that most Americans perceive marijuana as a medical substance rather than a dangerous drug. The removal of medical marijuana laws may create controversy within states and federal government. Some states may question the federal government's power in making the laws unconstitutional. The policy will also end all medical marijuana use. This means that patients that rely on the substance as a form of necessity will no longer be allowed to consume it. To some patients, marijuana seems to be the only drug that helps them alleviate their pain. The removal of the substance may jeopardize their health and wellbeing leading them to purchase it through the black market (Clark, 2000).

Most of the marijuana laws have been passed through state voting ballots. The removal of the laws will create controversy between organizations, legislatures, and advocates in favor of marijuana. They may lobby to the government demanding that the removal of the laws violates their rights. Furthermore, the policy will also affect medical marijuana dispensaries as they will be forced to shut down although being compliant with their state laws. Currently, California has approximately 100,000 medical marijuana users; San Francisco itself has about twice as many dispensaries as McDonald's (Seamon, Fass, Fleichti & Shraie, 2007). Having to shut down will decrease revenue to states that have passed these laws. It will also cost the federal government more money to prosecute individuals who violate the law.

### *Possible Outcomes*

Abolishing all state medical marijuana laws will create turmoil between states and the federal government especially in the sixteen states that have legalized medical marijuana. The U.S Constitution states that crime control is a matter that must be dealt with the states. The federal government may only interfere for certain crimes such as piracies, counterfeiting, treason, military crimes, and mail service (Newberry, 2000). The implementation of this policy will create heat by both sides of the parties, state legislatures, organizations, patients, and so forth. Through the use of the media, both parties will express their ideas in order to attain the support of the citizens. However, citizens may feel as their votes did not matter to the federal government.

Because most marijuana laws have been passed through the voting ballots, a debate will arise as to whether the federal government has the right in making state laws unconstitutional. People in favor of medical marijuana may dispute that abolishing state laws violates their democratic rights. Medical marijuana patients, physicians, advocates, and some state courts may also disagree with the ruling requesting a writ of certiorari from the Supreme Court. Due to the complexity of this issue, the Justices may also take a long time in reaching a decision as they must evaluate past court cases to determine their results. Because the removal of marijuana also relates to “individual rights,” the Justices will also have to determine if the policy violates any of these rights. Lastly, people opposed to medical marijuana may also lobby to the federal government demanding for the policies to remain in place.

**Status Quo: Leaving the Policies in Place**

If no alternatives are implemented, medical marijuana will remain in its current classification on the CSA. Its usage for medical treatment will remain illegal under federal law while states may continue to pass laws allowing its use. In addition, the federal government at any time may interfere with the laws through its powers of the Commerce Clause.

***Advantages***

With the current policies in place, the federal government could at any time end the distribution of medical marijuana in states that have passed these laws. This will just depend on the agenda of the President in term. Since the beginning of the CSA, the federal government has focused on ending drug abuse. This policy will continue to support the federal government's goal in prosecuting anyone who is affiliated with drug use. In addition, state marijuana laws will remain inferior to federal laws.

***Disadvantages***

The laws will continue to remain biased as no agreements will be reached between some states and federal government. As it has occurred in the past, there will be a continuance of court cases brought to state courts and possibly to the Supreme Court. The Justices will continue to base their decisions on past court cases that have complicated the issue and have not provided the best solution to resolve the problem. In addition, medical marijuana patients, dispensaries, physicians, and vendors will continue to run the risk of being prosecuted under federal law.

### *Possible Outcomes*

The “War on Marijuana” has cost taxpayers 10 to 12 billion dollars annually as the number of marijuana arrests has increased exceeding the total number of arrests for violent crimes (Stern & DiFonzo, 2009). Due to the existing laws, the federal government will continue to spend money on marijuana arrests if it becomes one of their top priorities. For example, during the Bush Administration, many dispensaries were forced to shut down as there was a demand to end medical marijuana use (Barrett, 2009). If the policies continue to remain the same, the federal government may interfere in the future with state medical marijuana laws. At the moment, sixteen states have passed these laws and possibly more states may continue to pass them in the future. However, these laws will become inferior if the federal government decides to take action.

## CHAPTER FOUR: SELECTION OF THE BEST ALTERNATIVE

The current policies on medical marijuana conflict each other. While the federal government has implemented policies prohibiting its use, some states have passed laws challenging federal law. Due to these conflicting views, it is an important to select the best alternative to resolve the ongoing problem. The researcher will evaluate the alternatives presented in the previous chapter along with the status quo. The alternatives will be measured on a set of principles. The principles are effectiveness, safety, liberty, political feasibility, and appropriateness. Assessing the alternatives will help the researcher to determine what alternative may resolve this problem. At the end of the chapter, the chosen alternative will be presented along with recommendations on how to implement it.

### Criteria for Selecting Alternatives

- **Effectiveness:** This principle has been selected because the alternatives will be measured on how effectively they will resolve the problem. Effectiveness is the key principle for the selection because it will ultimately solve the problem.
- **Safety:** Safety will be measured on how will the selected alternative help in keeping the public safe from drug abuse. It is important to measure safety because the selected alternative needs to create the least amount of spillovers.
- **Liberty:** Liberty is an essential principle that will be used because it can be measured in different ways, especially for this particular policy. Because there are multiple stakeholders involved with this issue, the liberty of one stakeholder may differ from another. For this reason, liberty is an important principle that will be used for this study.

- **Political Feasibility:** This principle is important because policymakers and advocate groups in support or in opposition of these policies influence the public. Those in support of medical marijuana gain public interest by explaining the benefits of passing these laws. Those who are opposed to these laws explain the dangers and the effects of the substance. The success of implementing the selected alternative will be based on the views of policymakers and advocate groups. For this reason, this principle has also been selected as an important measure to evaluate the alternatives.
- **Appropriateness:** This principle has been chosen because the researcher must select the most appropriate alternative that will benefit the United States as a whole. The alternative must be the most suitable that will continue to preserve public values while creating equality with the laws.

### **Applying the Principles to the Proposed Alternatives**

The researcher will use the selected principles to evaluate each alternative. Depending on the evaluation, the researcher will conclude what alternative will be the most successful to end the ongoing issue.

#### ***Alternative One:***

This alternative would reclassify marijuana as a schedule II drug under the Controlled Substances Act (CSA). The reclassification will make the use of medical marijuana legal under federal law.

#### **Effectiveness:**

This alternative will be effective in ending the current discrepancies that exist with medical marijuana laws. States that have passed medical marijuana laws will continue to regulate them without the interference of the federal government creating a uniform policy.

Safety:

This alternative will provide safety to people who purchase medical marijuana as they will no longer be prosecuted under federal law. Physicians will feel safe in prescribing it without running the risk of having their registrations revoked. Dispensaries will also feel safe of not having their businesses raided because it will be allowed under federal law to sell the substance. On the other hand, there is no certainty if allowing the use of medical marijuana will be safe to the public. There are studies that indicate the benefits of the substance while there are also studies that show the risks associated with the consumption. Therefore, it is difficult to measure the safety of this alternative. More research is needed to fully understand the dangers that are associated with this policy.

Liberty:

This alternative will give the liberty to states to pass medical marijuana laws if they choose to introduce them to their state laws. Voters will have the liberty to vote in favor or in opposition of these laws. Researchers interested in conducting studies on marijuana will have the liberty to perform studies without strict regulations from federal law. In addition, physicians will be given the liberty to prescribe marijuana and patients will have the liberty in consuming it for medical purposes only.

Political Feasibility:

This alternative is politically feasible because there are many support groups and policymakers in favor of medical marijuana. Organizations such as The National Organization for the Reform of Marijuana Laws (NORML), The American Academy of Family Physicians, The American Nurses Association, and so forth support its medicinal value. On the other hand, there are also organizations against the use of the substance such

National Eye Institute, American Academy of Ophthalmology, Glaucoma Research Association, and so forth (Procon, 2011). The reclassification may create controversy with those who have been pushing for stricter regulations against drug use.

Appropriateness:

This alternative is appropriate because the use of medical marijuana is not new to the United States. In addition, its rescheduling will not make the use of all marijuana legal; recreational use will remain prohibited under federal law. The alternative is also appropriate because researchers will be allowed to conduct studies on the substance which is needed.

***Alternative Two:***

Medical marijuana states should join together and file a lawsuit against the United States Government requesting for a reinterpretation of the Commerce Clause. The Supreme Court will have to decide who has the right to regulate medical marijuana laws by conducting an in-depth analysis on the current laws, interstate commerce, past court cases, and the U.S Constitution.

Effectiveness:

This alternative will be effective in ending the conflicts that exist between some states and the federal government. The Justices will decide who ultimately has the power. On the other hand, the alternative may not be effective in ending the marijuana debate due to the multiple stakeholders involved with the issue. Therefore, effectiveness is difficult to measure because the decision made by the Justices does not guarantee that the problem will be resolved.

Safety:

This alternative will be safe because the Justices are the ultimate decision makers and will decide who has the power based on logic and the existing laws. However, depending on the ruling, it is not sure if the decision will provide safety to the public and patients that need the substance.

Liberty:

The Justices will decide who has the liberty in regulating the policies. Liberty is difficult to measure for this policy because it is not clear who will get the liberty; the states or the federal government. In addition, there are other factors involved when defining liberty. For example, the right for physicians to recommend the substance is supported under the First Amendment and the right for states to pass laws is supported by the 10<sup>th</sup> Amendment.

Political Feasibility:

The alternative is politically feasible because there have been numerous court cases brought to the Supreme Court regarding the same issue. The Justices have based their decisions on the last interpretation of the Clause. However, a new interpretation of the Clause may be needed due to the changes in society.

Appropriateness:

The alternative will be appropriate because the Supreme Court is the highest court in the nation and makes decisions that cannot be reached between lower courts. Giving the Supreme Court the right to decide on the marijuana issue seems to be the most accurate way in solving the problem. However, there have been similar cases brought to the Supreme Court questioning the validity of marijuana laws. Therefore, there is no certainty if by states joining together will it make a difference to the previous decisions pertaining to this issue.

***Alternative Three:***

The removal of all state medical marijuana laws by the federal government. The laws will become unconstitutional. Citizens that have been abiding by their state laws will no longer be protected by their states.

**Effectiveness:**

The alternative will be effective in ending the current loopholes that exist with the laws as there will be uniformity between state and federal laws. On the other hand, the removal of the laws will not be effective in solving the issue. States also have rights under the U.S Constitution to implement their own policies. Removing the laws will create more issues as some states will not be satisfied with the implementation of this alternative.

Therefore, the effectiveness of this alternative is questionable.

**Safety:**

This alternative will continue to support the federal government's opposition to drug abuse in order to protect the public. Since marijuana is the most abused substance in the United States, the removal of medical marijuana will end its road towards legitimizing it. The alternative will also continue to provide safety for youths. Marijuana will no longer be perceived as an acceptable substance as no laws will be in place allowing its use. On the other hand, the alternative will not provide safety for patients that need the substance as a form of medical treatment. Not being able to consume the substance may jeopardize their health and security. Therefore, the overall safety of this alternative is uncertain.

**Liberty:**

This alternative gives the federal government the liberty in removing all medical marijuana laws. The federal government has the power to implement this alternative under

the Commerce Clause. By removing state medical marijuana laws, the federal government is not violating any type of power. On the contrary, they are exercising their power based on the U.S Constitution. On the other hand, this alternative does not provide liberty to states that have passed medical marijuana laws. States have the liberty in implementing policies favorable to their citizens. Removing these laws will suppress their powers consequently violating the liberties of the citizens who voted in favor of these laws. In addition, the alternative will also violate the rights of physicians that recommend it and patients that consume it.

Political Feasibility:

The alternative is politically feasible because there are many advocates and policymakers that oppose medical marijuana laws. In addition, the federal government is also against its use making this alternative powerful. However, because this policy will bring changes to states that have passed marijuana laws, it is likely that stakeholders in support of marijuana may lobby against this policy creating an increase of court cases.

Appropriateness:

The implementation of this alternative is not appropriate because negative outcomes will result from executing this policy. Removing state medical marijuana laws will not be suitable in fixing the problem as more problems will be created by states who oppose to this policy. Therefore, appropriateness cannot be measured under this alternative.

***Status Quo:***

This alternative would leave the current policies in place. States may continue to pass medical marijuana laws while they remain unconstitutional under federal law.

**Effectiveness:**

Implementing this alternative will not be effective in fixing the problem. Medical marijuana patients and dispensaries may be prosecuted at any time creating a rise of arrests and legal suits. The public will also continue to be confused because of the inconsistency of the laws; what may be legal under their state laws may not be permissible under federal law. Therefore, effectiveness cannot be applicable in this alternative because the current laws have not been successful.

**Safety:**

This alternative is not safe for physicians, patients, and vendors that are affiliated with the substance. They are running the risk of being prosecuted by the federal government.

**Liberty:**

Leaving the policies in place will continue to give states the liberty to pass medical marijuana laws. However, the alternative also gives the federal government the liberty to interfere with these laws. In addition, researchers are not given the liberty to successfully conduct studies due to its classification on the CSA. Therefore, liberty is questionable for this alternative because its validity contradicts due to the existing laws.

**Political Feasibility:**

The existing policies give the federal government the right to interfere with the laws at any time it desires. Therefore, it is politically feasible that in the future the federal government will interfere with state laws and prosecute any person affiliated with the

substance. On the other hand, it is politically feasible that more states will continue to pass marijuana laws regardless of the federal laws.

Appropriateness:

The current policies are not appropriate because they do not alleviate the problem. On the contrary, it has created mixed views by the public who are confused with marijuana's therapeutic value and its dangers. A more efficient policy is needed.

**Selection of the Best Alternative**

Based on the presented alternatives, it is difficult to reach a decision on what alternative will work the best to resolve the problem. Looking at the advantages and disadvantages and the principles that were used to measure each alternative, the best solution is to reclassify the substance as a schedule II drug. The researcher has selected this alternative because it will be the most effective in creating a uniform policy between federal and state law. The policy will create stability, which is needed. Currently, some states have allowed the use of medical marijuana and it is most likely that more states will continue to legalize similar laws through the use of voting ballots. In addition, more research is needed to understand the benefits and risks associated with consuming the substance since studies contradict each other; the reclassification will allow this further study. The removal of marijuana from a schedule I drug to a schedule II does not make it fully acceptable by the federal government. The reclassification will be in the same category as cocaine, codeine, amphetamine, opium and so forth (Drug Enforcement Administration [DEA]). Therefore, the drug will remain illegal for recreational use and penalties for misuse will remain in place by the federal government.

While the other alternatives presented have advantages, it will be difficult to implement them due to a possible increase of court cases and legal suits by states, patients, physicians, vendors, and any one affiliated with the substance. This is because marijuana is associated with medical treatment. In addition, states that have legalized medical marijuana laws have benefited from the regulation increasing revenue. In the state of California, medical marijuana generates approximately \$14 billion a year making it the second largest agricultural product of the state (Stateman, 2010). This is especially important during a time of economic crisis where revenue is scarce and public services are decreasing. Overall, the selected alternative will benefit in ending the current loopholes of the laws. However, states and the federal government must join together in finding ways of implementing it in a way that will benefit best public safety. The researcher will propose several recommendations in the following section to successfully execute this policy.

## **CHAPTER FIVE: SUMMARY, RECOMMENDATIONS, AND CONCLUSION**

### **Summary**

The previous chapters present the difficulties associated with medical marijuana laws. Because the United States operates under the federalism theory, it is challenging for some states and the federal government to reach an agreement on certain issues as seen with this particular policy. The current laws do not help in resolving the problem as it has been seen through the number of court cases brought to the Supreme Court. Therefore, it is important to find a solution to this problem because no improvements will be attained from the current policies. The researcher proposed four alternatives that may help in resolving the issue. Each alternative was evaluated based on the advantages and disadvantages, the possible outcomes, and a set of principles. After carefully evaluating each alternative, the researcher selected the reclassification of marijuana to a schedule II drug as the best solution. The researcher has selected this alternative because it will help close the gaps that exist with marijuana policies at the state and federal level.

The reclassification of marijuana will not make the substance legal. Marijuana will be classified as a substance that may still have high risk for abuse, but it has been recognized by the FDA to have medical value. It will be in the same category as cocaine, opium, codeine, amphetamine, and so forth. Therefore, regulations against its abuse will remain in place. While the other alternatives presented some positive results, there are more negative outcomes associated when weighting all possible outcomes. This is because marijuana has been claimed by some scholars and organizations to have medical value. In addition, there have been testimonies by medically ill patients that claim that no other pharmaceutical drugs relieve their pains as consuming marijuana. Therefore, abolishing or removing these laws

will create more problems between states and patients. In order for this alternative to be best implemented, the researcher proposes eight recommendations.

### **Recommendations For Implementing the Alternative**

Putting into effect this policy will solve the ongoing issue of medical marijuana laws. However, because the alternative also conveys negative consequences if not implemented correctly, the researcher suggests eight recommendations. It is important for policymakers to follow these recommendations in order to create a plan that will best benefit the public and to avoid serious problems in the future.

- The federal government should implement a policy similar to cigarettes prohibiting marijuana from being advertised through the media. This will prevent people from glamorizing it as a popular substance.
- Children should be educated at the beginning of their schooling the effects of drug use including marijuana. Educators must explain that marijuana should only be used when a person medically needs it and physicians are the only people that can prescribe it. Teachers should assign homework assignments relevant to the side effects of drugs to make sure that children learned from the lecture.
- Additional research should be conducted to determine if marijuana is an addictive substance, to verify if the existing studies are relevant, and to come up with strategies if that is the case.
- After researchers have performed extensive research on its therapeutic use, states and the federal government should work together in selecting what type of illnesses are appropriate for medical marijuana. A policy should be implemented addressing these illnesses.

- Because it has been found that marijuana may weaken the immune system when it is smoked, states that have passed these laws should encouraged patients to consume the substance through other forms such as vaporizers, edibles, teas, and so forth.  
Informational pamphlets should be provided presenting these alternatives. It is also important for health clinics and marijuana dispensaries to provide informational workshops regarding the benefits and risks of consuming marijuana.
- While marijuana may be essential for its therapeutic purposes, medically ill children should be prohibited from consuming the substance until research by physicians and scientists show otherwise. The federal government should make the ultimate ruling based on the research.
- Since marijuana differs by its potency and its classification, it is important for the federal government to develop hybrids to ensure uniform potency. This will diminish any biases when conducting studies.
- Lastly, the researcher recommends that the federal government conduct an assessment of the medical marijuana laws that exist in other countries (such as Canada, Australia, the Netherlands, and so forth). This will give the government a better understanding of how to implement them in the United States.

## **Conclusion**

The consumption of marijuana in the United States is a debatable issue because its use for medical and recreational purposes can be traced back many years. The researcher has evaluated how its controversy has not helped states and the federal government to come up with an agreement on its problem definition. The researcher concludes that a uniform policy is the most suitable way in solving the issue. Looking at the possible solutions, the researcher

selected the reclassification of marijuana to a schedule II drug as the most successful alternative. However, for every policy that it is implemented, consequences derive. For this reason, it is very important for medical marijuana states and the federal government to work together and apply the suggested recommendations. The researcher also suggests that further study should be conducted on the effects of recreational use. Some states may push for these laws as it was seen in the state of California.

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## APPENDIX A: IRB APPROVAL



## CSU Bakersfield

Academic Affairs

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**Steve Suter, Ph.D.**  
Department of Psychology  
Research Ethics Review Coordinator  
and IRB/HSR Secretary

**Date:** 15 March 2011

**To:** Diana Quintana, PPAS student

**cc:** Paul Newberry, IRB Chair  
R. Steven Daniels, Public Policy & Administration Department

**From:** Steve Suter, Research Ethics Review Coordinator

**Subject:** Protocol 11-46: Not Human Subjects Research

Thank you for bringing your protocol, "A Policy Analysis on the Regulations of Marijuana in the United States" to the attention of the IRB/HSR. On the form "Is My Project Human Subjects Research?" you indicated the following:

I want to interview, survey, systematically observe, or collect other data from human subjects, for example, students in the educational setting. **NO**

I want to access data about specific persons that have already been collected by others [such as test scores or demographic information]. Those data can be linked to specific persons [regardless of whether I will link data and persons in my research or reveal anyone's identities]. **NO**

Given this, your proposed project will not constitute human subjects research. Therefore, it does not fall within the purview of the CSUB IRB/HSR. Good luck with your project.

If you have any questions, or there are any changes that might bring these activities within the purview of the IRB/HSR, please notify me immediately at 654-2373. Thank you.

Steve Suter, University Research Ethics Review Coordinator

## APPENDIX B: STATES THAT HAVE LEGALIZED MEDICAL MARIJUANA

### 16 States that have legalized Medical Marijuana

<b>State</b>	<b>Year the Laws were Passed</b>	<b>How the Laws were Passed</b>	<b>Fee to attain Medical Card</b>	<b>Possession Limit</b>
Alaska	1998	Ballot Measure 8	\$25/\$20	1 oz. usable; 6 plants (3mature, 3 immature)
Arizona	2010	Proposition 203	\$150/\$75	2.5 oz. usable; 0-12 plants
California	1996	Proposition 215	\$66/\$33	8 oz. usable; 18 plants (6 mature, 12 immature)
Colorado	1996	Ballot Amendment 20	\$90	2 oz. usable; 6 plants (3 mature, 3 immature)
DC	2010	Amendment Act B18-622	Not yet established	2 oz. dried; limits on other forms to be determined
Delaware	2011	Senate Bill 17	Not yet established	6oz usable
Hawaii	2000	Senate Bill 862	\$25	3 oz. usable; 7plants (3 mature, 4 immature)
Maine	1999	Ballot Question 2	\$100/\$75	2.5 oz. usable; 6 plants
Michigan	2008	Proposal 1	\$100/\$25	2.5 oz. usable; 12 plants
Montana	2004	Initiative 148	\$25/\$10	1 oz. usable; 6 plants
Nevada	2000	Ballot Question 9	\$150+	1 oz. usable; 7plants (3 mature, 12 immature)
New Jersey	2010	Senate Bill 119	\$200/\$20	2 oz. usable
New Mexico	2007	Senate Bill 523	\$0	6 oz. usable; 16 plants (4 mature, 12 immature)
Oregon	1998	Ballot Measure 67	\$100/\$20	24 oz. usable; 24 plants ( 6 mature, 18 immature)
Rhode Island	2006	Senate Bill 0710	\$75/ \$10	2.5 oz. usable/ 12 plants

Vermont	2004	Senate Bill 76	\$50	2 oz. usable; 9 plants (2 mature, 7 immature)
Washington	1998	Initiative 692	No program exists	24 oz. usable; 15 plants

Source: <http://www.medicalmarijuana.procon.org>