



# Marijuana Law

## Selected Legal Issues

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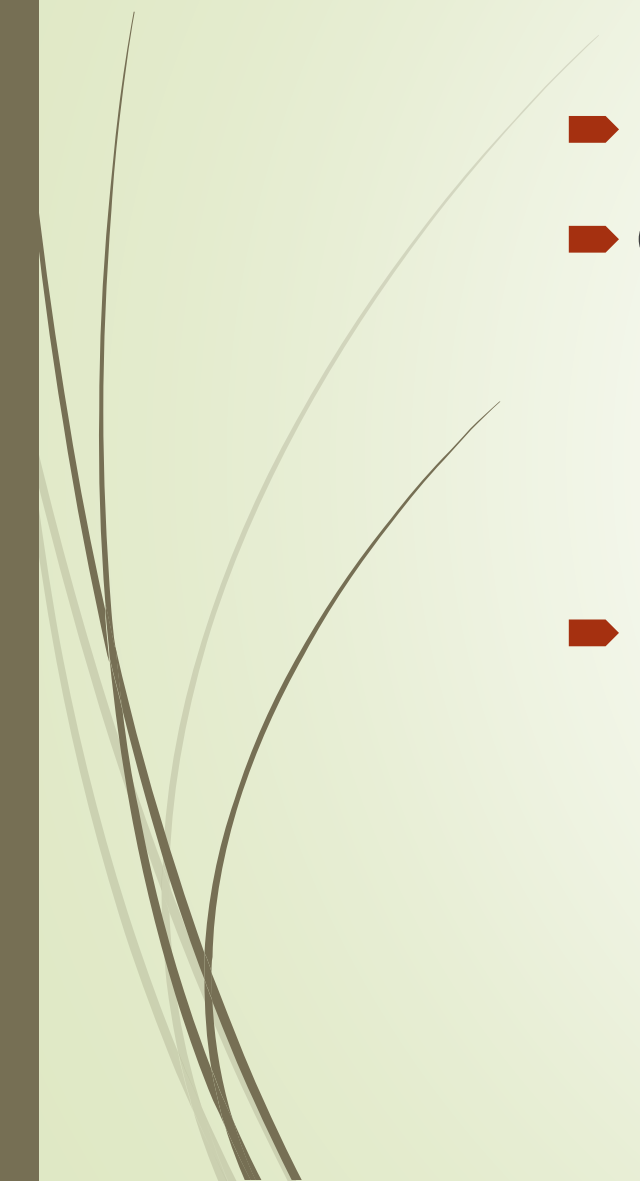


# Disclosures & Conflicts

- None
  - Here in my personal capacity
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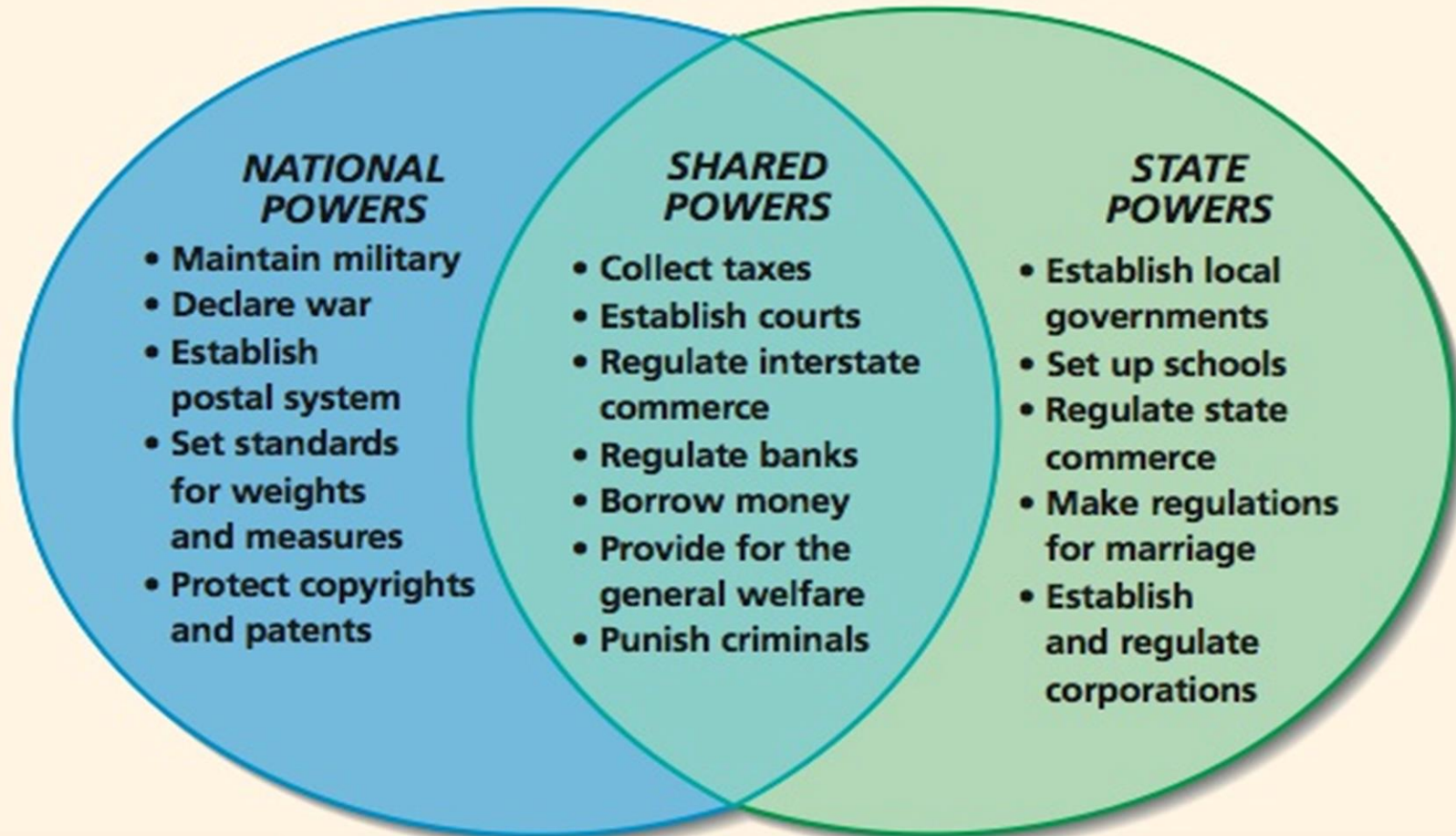


# Overview

- Federal law and state law are inconsistent – why?
  - Colorado as a case study
    - Differences between medical & recreational marijuana
    - Specific MMJ requirements (patients & physicians)
  - Federal law
    - Controlled Substances Act (and its enforcement)
    - Indirect consequences of federal illegality
    - Hemp, CBD issues
    - Potential laws of note (Hemp Act, STATES Act)
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# Federalism

**Americans live under both national and state governments.**





Both the **federal** government and **state** governments can criminalize certain conduct.

Including the use of marijuana.



Or not.






# Colorado – brief history

- 2000 – Amendment 20 to Colo. Constitution
  - Authorized the “medical use of marijuana” for “debilitating medical conditions”
  - Limited criminal protection
  - No legalized sale of medical marijuana



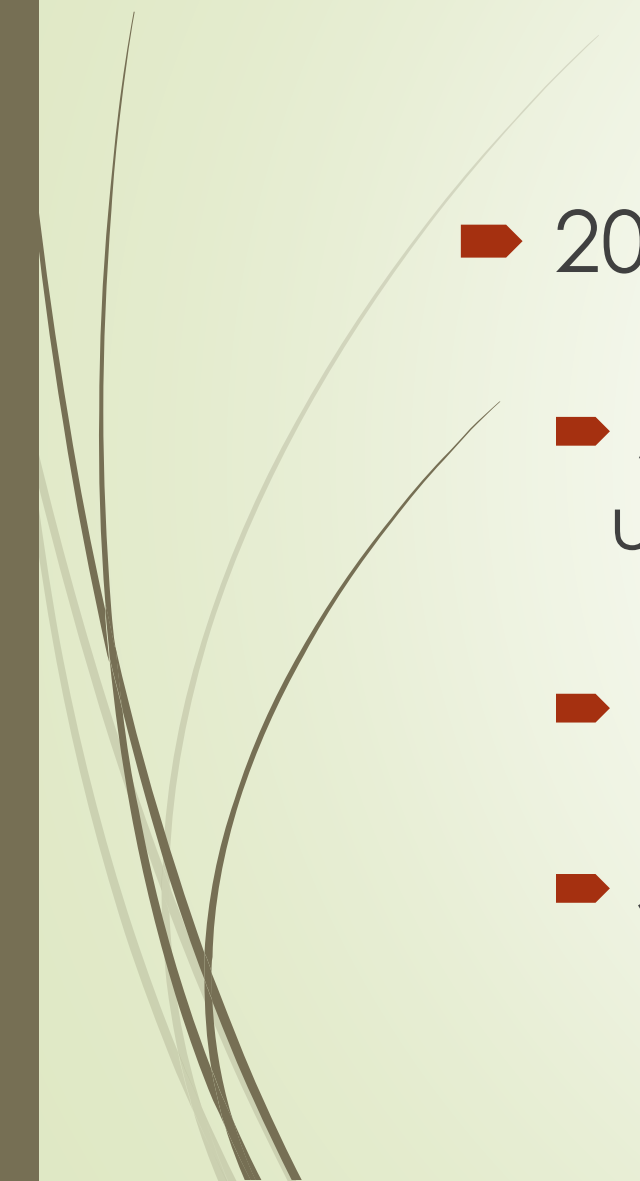
# Colorado – brief history

- 2010 – Medical Marijuana Code
  - Authorized new suppliers of MMJ
  - Localities have a choice
  - New physician regulations
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# Colorado – brief history

- 2012 – Amendment 64
  - Authorized personal (non-medical, recreational) use of marijuana
  - Localities have a choice
  - Separate regulation of industrial hemp
- 



# Medical v. Recreational

And some medical marijuana specifics



# Medical v. Recreational

## Medical

- Quantity
  - 6 plants/2 ounces +
- Price
  - Lower tax
- Availability
  - Centers\* & PCGs

## Recreational

- Quantity
  - 6 plants/1 ounce
- Price
  - Higher tax
- Availability
  - Centers\*



# Medical Marijuana Specifics

- Physician role in medical marijuana
  - Providing a recommendation
  - Bona-fide physician-patient relationship
  - Special rules for minor patients
- Selected restrictions on MMJ
  - Caregiver & patient cultivation restrictions
  - Restrictions on use of MMJ
  - Local government restrictions



# Physician Role

- Providing a recommendation for a patient
  - What is this for?
  - Why a “recommendation?”
  - (1) qualifying condition & (2) might benefit from using MMJ
- Bona-fide physician-patient relationship
  - Valid license, in good standing
  - Treatment or counseling relationship
  - Full assessment of medical history and current condition
  - Appropriate personal physical examination
  - Minor patients slightly different





# Physician Oversight



## Professional oversight

- ▶ Colorado Medical Board
- ▶ General standards
- ▶ MMJ-specific guidance



## Related oversight

- ▶ Department of Public Health
- ▶ Pecuniary interest oversight

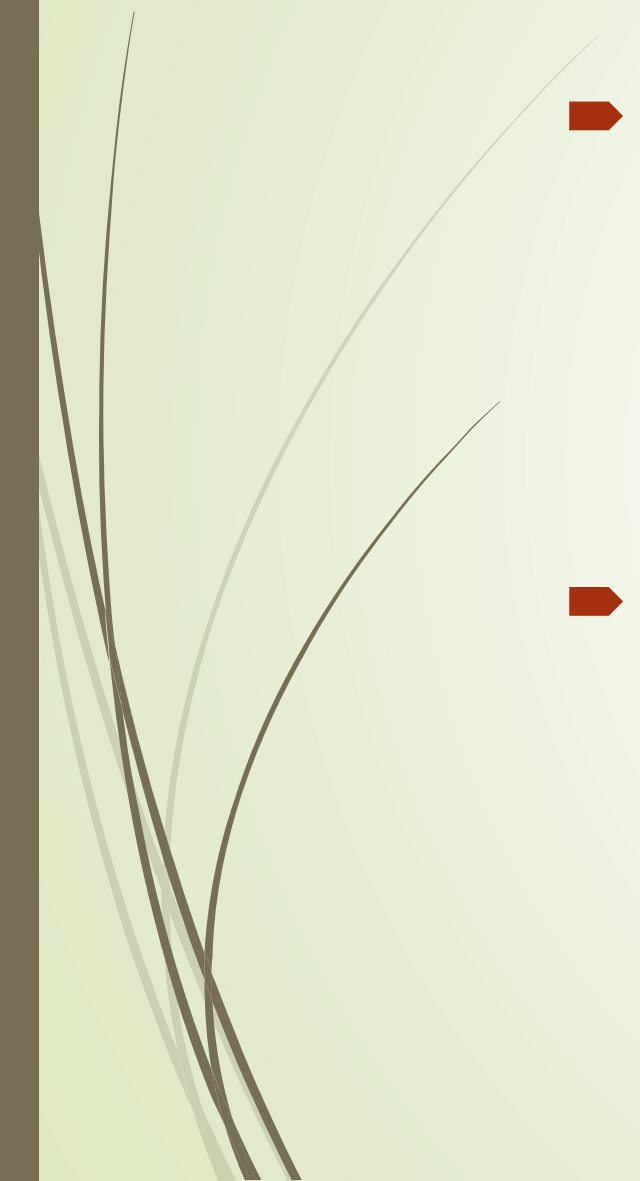


## Criminal law

- ▶ *People v. Montante*
- ▶ Guilty - attempt to influence a public servant
- ▶ Other crimes possible



# Selected Restrictions

- ▶ Caregiver & patient cultivation restrictions
    - ▶ Registration with DOR
    - ▶ Location, patient card #s, plant count
    - ▶ Residential property limits
  - ▶ Other restrictions on use of MMJ
    - ▶ Can't endanger health & well-being
    - ▶ Not in plain view
    - ▶ Negligent behavior or professional malpractice
    - ▶ Not on school grounds\*
- 



# Selected Restrictions, cont.

- Local government restrictions
    - Ordinances to address public safety
    - Types of residences (single-family v. multi-family)
    - Plants per residence
    - Permissible lights
    - Odor controls
    - Building & fire codes (electric, plumbing, etc.)
    - Nuisance & abatement
    - Supplier restrictions
- 



# Federal Law



# Federal Law

- Why do we care?
- Controlled Substances Act (CSA)
- Enforcement discretion
  - Dept. of Justice memos; Congress-imposed limits
- Indirect consequences of federal illegality
- CBD issues
- Farm Bill (hemp)
- Potential laws of note
  - Hemp Act
  - STATES Act





# ***Gonzalez v. Raich***

- Angel Raich & Diane Monson
  - California residents using MMJ under California law
  - DEA seized and destroyed Monson's 6 plants
- They sued DEA
- Issue: Can the federal government prohibit use of marijuana that is in compliance with California law?
- Answer: Yes.
- Federal government can enforce federal criminal law (the CSA) against marijuana use that is otherwise lawful under state law.



# Controlled Substances Act

- Establishes a closed regulatory system
- Regulates manufacturing, distribution, and possession of “controlled substances”
- Five schedules based on medical use, abuse potential, physical & psychological effects
- Schedule 1 is highest and includes marijuana
- Manufacture, distribution, and possession of marijuana is a criminal offense
- Under *Raich*, these criminal prohibitions can be enforced against those who are using marijuana lawfully under State law

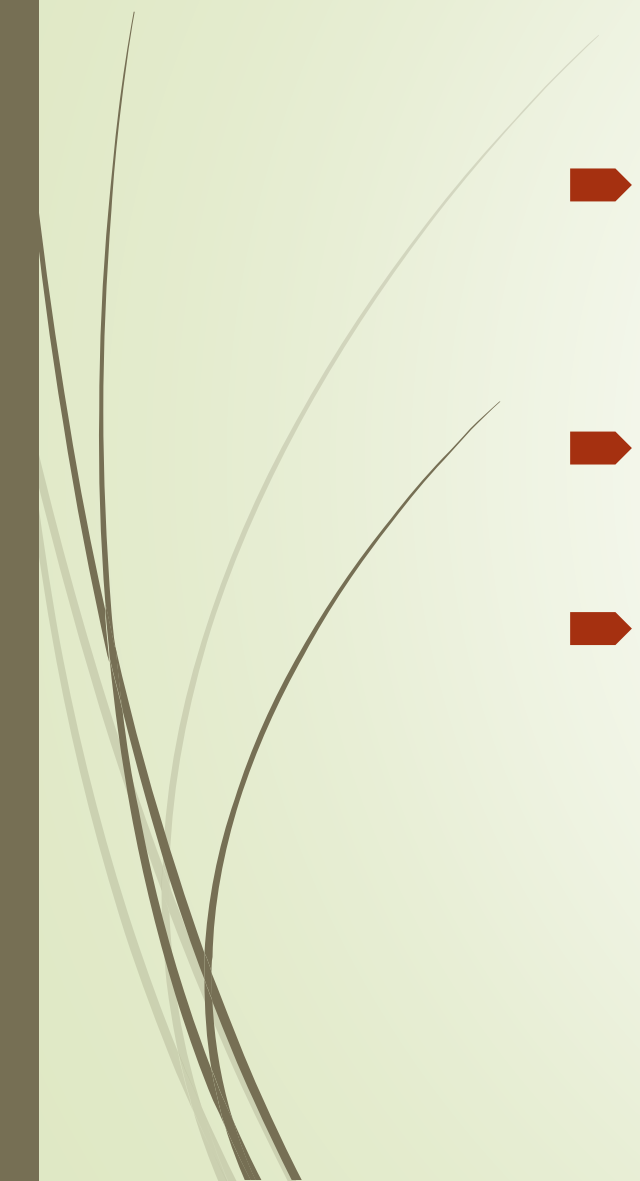


# CSA – provider provisions

- Not just prohibitions
- Allows providers to administer, research, manufacture, or dispense controlled substances.
- Must be consistent with the public interest
- Control against unlawful diversion
- *Conant v. Walters*
- Massachusetts physicians (2014)
- Colorado physicians (2017)



# Enforcement of CSA

- The federal government has discretion (and limited resources).
  - DOJ memos (2009 – 2018)
  - Rohrabacher-Blumenauer amendment
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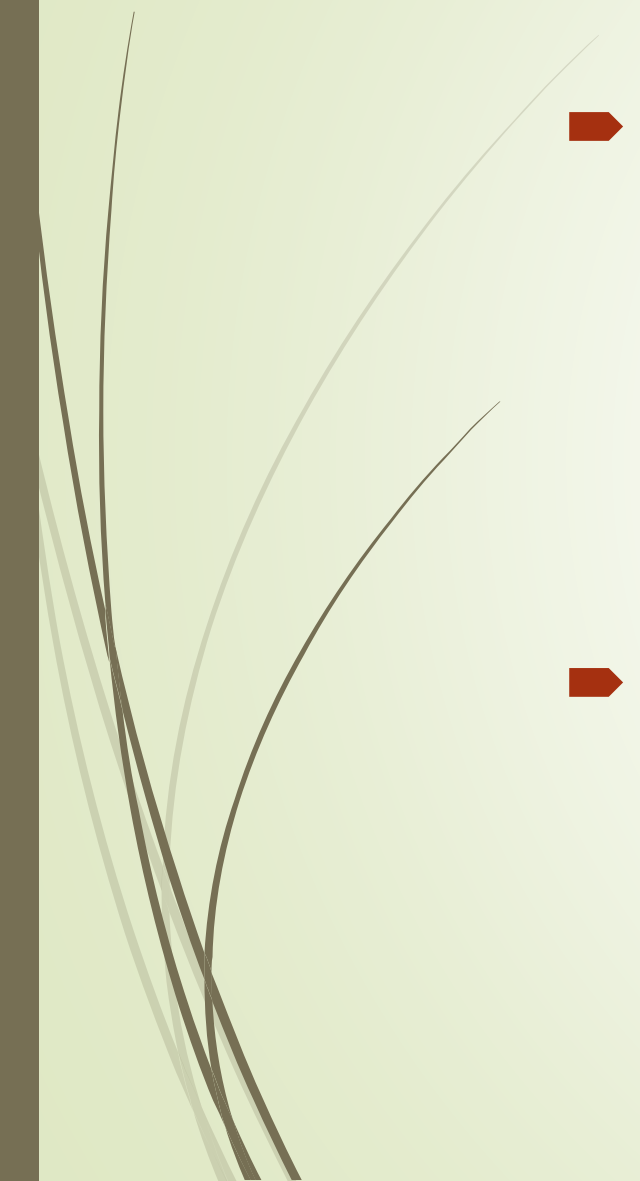
# Indirect consequences of federal illegality

- Definitions, Grants, Contracts & Preemption
- Examples
  - *Coats v. Dish Network* (“lawful”)
  - School programs to prevent illicit drugs
  - Drug-Free Workplace Act
  - Disability discrimination claims
  - *People v. Crouse*






# Hemp & CBD issues

- Hemp
    - What is hemp?
    - Federal legality
    - Preview of possible new law
  - CBD
    - What is CBD?
    - Federal legality
    - Open questions
- 



# Hemp

- Why do we care?
    - 2014 farm bill
  - Definition of hemp
    - *Cannabis sativa* L. and any part of such plant with no more than 0.3% delta-9 THC.
  - Research institutions and state agriculture depts.
  - Rohrabacher-Blumenauer enforcement parallel
  - Carve-out from CSA
  - *HIA v. DEA*
- 



# CBD

- First, the thing to keep in mind:



“


Anybody out there that says the law on CBD is definite one way or another is lying.

”

- Jonathan Miller, Attorney, US Hemp Roundtable  
(reported by Ben Adlin of Leafly.com)



# CBD

- What is CBD?
  - What law regulates CBD?
    - CSA
    - Farm bill impact
- 



# IS YOUR CBD LEGAL?



\* The DEA does not necessarily agree with this interpretation. This does not constitute legal advice.



## CBD, cont.

- Online sales
- FDA warning letters, guidance
  - (1) unsubstantiated claims (2) false #s
  - Not a supplement or food additive
- State-level regulation
- Possible rescheduling of CBD



# Possible upcoming laws

- Hemp Farming Act of 2018
    - Removes hemp from CSA
    - Applies nationwide
  - STATES Act
    - Removes state-compliant use from CSA
    - Medical *and* recreational (21+)
    - Changes federal status
    - Removes industrial hemp from CSA
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