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Up In Smoke

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November 10, 2014

1 Over the past two decades the legalization of medical marijuana has been an outbreak for
2 both the national and state government. The outbreak has brought plenty of complications and
3 debates for everyone involved. However, one of the biggest debates is where the legality of this
4 issue should come from, whether it be the state government or federal government. Should
5 medical marijuana be on a state by state basis? Or, should medical marijuana be legalized by the
6 national government? Even though there are 23 states and D.C that have legalized medical
7 marijuana, I still content that medical marijuana's legality should be determined by the federal
8 government due to the commerce and supremacy clause as listed in the constitution, the Conant
9 v. Walters case and USA v. Oakland Cannabis Buyers Cooperative and Jeffery Jones. However,
10 I do believe that state controlled 'experiments' have beneficial effects for the future of this
11 argument. Such as Colorado's experiment with legal medical marijuana and how it has affected
12 them financially, socially, and culturally. Due to individual states having laws allowing medical
13 marijuana is allowed, this allows us, as a nation, to have strong guidelines to the legality of
14 medical marijuana.

15 One of the greatest documents ever written is the Constitution of the United States of
16 America. The Constitution serves as rules, guidelines and regulation for the nation. To this day,
17 congressmen, judges, the president, and people of the nation, still refer to the Constitution for
18 guidelines on how to handle legal issues. There are two major clauses listed in the Constitution
19 that can help figure out if legislation of marijuana should be taken care of at the state of national
20 level.

21 The first clause is the commerce clause found in Article I, Section 8. The commerce
22 clause is to "regulate Commerce with foreign Nations, and among the several States, and with

1 the Indian Tribes” (Kernell, 2014). This clause allows congress to maintain commerce in order
2 to guarantee that the course of interstate commerce is free from local limitations applied by
3 various states. The purpose of this clause is to maintain order to guarantee that the flow of
4 interstate commerce is free from local limits. The Commerce clause plays a great play into the
5 legalization of medical marijuana. This ties in because the clause wouldn’t allow the substance to
6 flow between states. This is just one example of why the Federal government should be in
7 control of this issue because the commerce clause can only be enforced by the federal
8 government, and not by the state government.

9 The second clause is the supremacy clause found in Article VI of the Constitution. This
10 clause states that the national laws are the “supreme” law of the land and therefore take
11 precedence over any law adopted by the states or localities. This clause is stating that national
12 laws trumps anything else. The supremacy clause normally plays into effect when it should be
13 supreme for a reason for national uniformity. This clause plays right into the legality of medical
14 marijuana. If the federal government were to pass a law legalizing medical marijuana, the law
15 would apply to all 50 states, all states would be equal. Within these two clauses, the constitution
16 suggests that the Federal government should control the legality of medical marijuana.

17 This topic is a hot topic nationwide. I believe that by legalizing medical marijuana state
18 by state is not solving any issues for the other states where it is illegal. This outbreak of wanting
19 to legalize medical marijuana is such a massive problem that it cannot be tackled one state at a
20 time. It needs to be tackled all together, all at once as a united group. I believe that we, as a
21 united nation, should be taking into account the Commerce and Supremacy clause when deciding
22 which level of government should take control of the legality of medical marijuana. These

1 clauses were set in the constitution for a reason, we should be taking the clauses into account.
2 Both of these clauses can be strongly supported with a more powerful national government. A
3 strong example of these two acts is in the Controlled Substance Act. (Garvey, 2014)

4 “The purpose of the CSA is to regulate and facilitate the manufacture, distribution, and
5 use of controlled substances for legitimate medical, scientific, research, and industrial
6 purposes, and to prevent these substances from being diverted for illegal purposes... The
7 CSA requires persons who handle controlled substances (such as drug manufacturers,
8 wholesale distributors, doctors, hospitals, pharmacies, and scientific researchers) to
9 register with the Drug Enforcement Administration (DEA) in the U.S. Department of
10 Justice, the federal agency that administers and enforces the CSA” (Garvey, 2014).

11 By passing this act, shows both the supremacy clause by making it a federal law. No state was
12 allowed to make their own exceptions to this law. This also shows commerce clause, because it
13 is controlling the substance from going from state to state, by making the only people who are
14 allowed to administer the substance has to be registered within the DEA.

15 Two very well-known court case, along with several amicus briefs, showed medical
16 marijuana had its major benefits. I believe that the stronger and more important that an issue
17 becomes, the federal government will have to see that if they pass legislation for medical
18 marijuana, would calm the outbreak.

19 The first case is the Conant verse Walters, or formerly known as Conant verses
20 McCaffrey. This case was in result of California passing their own medical marijuana regulations
21 in 1996. The government threatened physicians who recommended marijuana, would lose their

1 license. Both the physicians and their patients filed a lawsuit. The outcome of the court permitted
2 medical doctors to talk about marijuana with their patients and approved usage of medical
3 marijuana (ProCon.org, 2009). Along with this court case, came many amicus briefs. An amicus
4 brief is essentially, a person with strong interest in the subject matter of an action, but not a party
5 to the action, may petition the court for permission to file a brief. This particular case included
6 amicus briefs by American Public Health Association, American Medical Association, California
7 Medical Association, and several other credible resources. Within the amicus briefs was stated
8 “Clinical experiences and growing body of medical research confirm that for a small but
9 significant number of patients, marijuana serves as the only effective medicine for suppressing
10 nausea, stimulating appetite, or relieving pain.” (Willey, 2001). This case ended up in a pro
11 medical marijuana stand point. But the question still holds... Which level of government should
12 take care of the legalization of medical marijuana? In the Conant verse Walters case, it went
13 through the US district Court, which is through the federal court. This case resulted in a decision
14 that the federal government used both the supremacy clause, and the commerce clause to enact
15 this law, and resulted in the legalization of medical marijuana for California.

16 The next case is USA verses Oakland Cannabis Buyers’ Cooperative and Jeffery Jones.
17 This case was about the Oakland Cannabis Buyer’s Cooperative and their proprietor, Jeffery
18 Jones who passed out marijuana based on the idea that they could be a ‘caregiver’ for their
19 patients, and that it would qualify under the federal necessity law. The US disagreed, and filed a
20 lawsuit to cease Oakland Cannabis Buyers’ Cooperative operations. The United States Supreme
21 Court rejected the necessity law due to the enacted law of the CSA. Just like the Conant vs
22 Walter case there was also amicus briefs. Some of those came from the city of Oakland, state of

1 California, California Medical Association, and several other creditable resources. Within those
2 amicus briefs, there was plenty of information to consider for the ruling. So, once again we
3 arrive at the same point... just because a court case ruled for pro medical marijuana... What
4 level of government should control the power of the legality of medical marijuana? Once again
5 this court case used a federal court to rule the case, and used both clauses as previously talked
6 about.

7 There are always two views of a situation. In this case, the opposition would be that the
8 legalization of medical marijuana should come from the individual state instead of the national
9 government. In the instance that medical marijuana is passed by individual states, the state would
10 be able to tax the marijuana, and can also impact the state in aspects of social and cultural
11 behaviors. Colorado serves as a great example of how legalizing medical marijuana at the state
12 level can be a benefit. Colorado has the ability to use marijuana as a form of therapy for an array
13 of diseases and issues that people suffer from. Another benefit to this, is that users of medical
14 marijuana have easier access to it. People will no longer have to hide that they are using
15 marijuana to help ease their medical issues.

16 All together I strongly believe that the federal government should have full control and
17 power to control the legalization of marijuana. There is support from the constitution for a
18 stronger, more powerful federal government, and also there are two great court cases that help
19 show that the federal government is more suitable to control this issue that the nation has been
20 facing the past two decades.

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