



# FEDERALISM ISSUE: MARIJUANA LEGALIZATION

BY SEVION DACOSTA '21

MARCH 4, 2020

*Photo Credit: Wikimedia Commons*

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

The Trump administration has withdrawn its plan to increase enforcement of federal law in Colorado, where recreational cannabis is legal, after Senator Cory Gardner (R-CO) blocked multiple confirmations of potential Justice Department nominees. Here are the proposed policies of top-ranked Democratic candidates on the topic of marijuana legalization and decriminalization. While the federal government still does not enforce the CSA, more states have begun releasing and expunging criminal records for individu-

als who were arrested on Marijuana charges. This federal debate has grown in importance, especially as it relates to criminal justice reform. Nonetheless, as per the Supreme Court's ruling in *Gonzalez v. Raich* states that Congress - under the Commerce Clause- still has the power to regulate activities that substantially affect interstate commerce.<sup>2</sup> Thus, the Court held that the enforcement of the CSA against individuals who grow and use marijuana is within federal power. The Court did not - and still has not - overturned any States which have legalized marijuana, but the federal government can at anytime still enforce the CSA against those state residents. The effect of this stare decisis is that employers can still have a zero tolerance policy for marijuana in their employment contracts as it is illegal under federal law.

## THE CANDIDATES

Here are the top three Democratic presidential candidates' visions on marijuana legalization:

---

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

<sup>2</sup> [Gonzalez, Attorney General, et. al. v. Raich et. al., 545 U.S. 1, No. 3-1454 \(June 6, 2005\).](#)

Despite former Vice President Biden's past history of being tough on drug crimes and his belief of marijuana as a gateway drug, he now says he will decriminalize marijuana federally. This would include automatically expunging convictions for marijuana possessions.<sup>3</sup> This is a byproduct of VP Biden's criminal justice policy to decrease the number of incarcerated individuals.

Senator Bernie Sanders' proposal includes fully legalizing marijuana at the federal level and would include an application grant with \$10 billion in potential aid to help individuals create their own marijuana farms. Sanders is also an advocate for the Marijuana

Justice Act and the Marijuana Opportunity Reinvestment and Expungement Act. These acts would help to overturn all federal justice policies on marijuana possession and expunge past convictions of those arrested for marijuana-related offenses.<sup>4</sup>

Senator Elizabeth Warren's proposal is very similar to Senator Sanders'. She hopes to expunge all criminal records related to possession of marijuana for past convictions for marijuana possession. She favors an overhaul of federal criminal justice policies. Senator Warren has also sponsored the Marijuana Justice Act and the Marijuana Opportunity Reinvestment and Expungement Act<sup>5</sup>

---

<sup>3</sup> <https://www.politico.com/2020-election/candidates-views-on-the-issues/marijuana-cannabis-legalization/legalizing-marijuana/>

<sup>4</sup> [Ibid.](#)

<sup>5</sup> [Ibid.](#)

