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**Legalization of Cannabis for Non-medical
Purposes in the United States: Discrepancy
between Federal and State Laws**

Diplomová práce

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Abstrakt

Diplomová práce se věnuje tématu legalizace konopí ve státě Colorado. Legislativa přijatá na federální úrovni zakazuje produkci, distribuci a užívání konopí. Ke změně v přístupu ke konopí a konopným produktům došlo na úrovni některých států USA. Prostřednictvím veřejných referend bylo konopí v některých státech USA plně legalizováno pro nelékařské účely. Tato změna představuje zásadní obrat v protidrogové politice a v budoucnu může mít vliv na celkovou podobu federální protidrogové politiky vůči konopí. Tato práce na příkladu Colorada ilustruje rozpor v přístupu ke konopí mezi některými státy USA a federální vládou. Popisem a analýzou regulačních opatření v Coloradu si práce klade za cíl pojmenovat některá rizika regulace, která by mohla zapříčinit střet s federální vládou. Práce poukazuje na liberální aspekty v přístupu k regulaci ve státě Colorado a konfrontuje je s nařízením federální vlády zavést silný regulační rámec, který bude v souladu s federálními prioritami v oblasti vymáhání práva. Práce obsahuje soubor doporučení, jež mohou přispět ke zmírnění dopadů užívání konopí a konopných produktů v Coloradu, a také zamezit možnému středu s federální vládou, která zatím *de jure* trvá na prohibici i přes to, že do legalizačního úsilí ve vybraných státech aktivně nezasahuje.

Abstract

This thesis focuses on the issue of cannabis legalization in Colorado. Legislation adopted at the federal level prohibits production, distribution and consumption of cannabis. Through public ballot initiatives, use of cannabis for non-medical purposes was legalized on the state level. This approach represents a fundamental change in drug policy and, in the future, it could affect federal drug policy regarding cannabis. This thesis uses the example of Colorado to illustrate the inconsistency in the legal approach to cannabis between some of the U.S. states and the federal government. By describing and analyzing the control measures in Colorado, this thesis aims to identify various regulatory risks, which might cause conflicts with the federal government. The thesis points to the liberal aspects of the regulation in Colorado and confronts the discrepancy with the directive of the federal government to establish a strong regulatory framework that is consistent with federal priorities in the area of law enforcement. The thesis contains a set of recommendations that contribute to reducing potential negative effects. Even though the federal government did not interfere with state's cannabis legalization, these recommendations could prevent a possible clash with the federal government, which still *de jure* prohibits cannabis use.

Klíčová slova

Colorado, legalizace, regulace, konopí, protidrogová politika

Keywords

Colorado, legalization, regulation, cannabis, drug policy

Rozsah práce: 97 437 znaků

Prohlášení

1. Prohlašuji, že jsem předkládanou práci zpracoval samostatně a použil jen uvedené prameny a literaturu.
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V Praze dne 15. května 2015

Tomáš Vlach

Poděkování

Na tomto místě bych rád poděkoval paní Mgr. Janě Sehnákové za její profesionalitu

a nezměrnou ochotu během celého vedení mé diplomové práce. Dále děkuji za řadu užitečných podnětů a připomínek k tématu. Současně děkuji paní Normě Hervey, Ph.D., za opravu gramatiky v celém textu diplomové práce a cenné připomínky k tématu. V neposlední řadě děkuji rodině, která mě během celého studia podporovala.

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	<p>V čem se oproti původnímu zadání změnil cíl práce?</p> <p>Originally, I was interested in the FED role during the financial crisis that began in 2008. After I became a staff member of the Government Council for Drug Policy Coordination, I decided to focus on US drug policy. Particularly, I was interested in cannabis regulation for non-medical purposes on the state level. The US approach to this issue has drawn some interest in the Czech Republic, my research might therefore have practical implications for the drug policy discussion and formation in the Czech Republic.</p>
	<p>Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu?</p> <p>The topic of the thesis changed completely while staying in territory of the United States. The thesis will now focus on US cannabis control. This topic is more contemporary, as we are witnessing significant changes in cannabis legalization for non-medical purposes on state level. Non-medical cannabis was first legalized in Colorado</p>
	<p>Jak se proměnila struktura práce (vyjádřete stručným obsahem)?</p> <p>The new thesis has a completely new structure. The thesis is divided into three main chapters: 1) Cannabis Control: International, National Level and State Level Perspective, 2) Colorado Cannabis Regulatory Framework, 3) Policy Design for Cannabis Legalization</p>

Jakým vývojem prošla metodologická koncepce práce?

The thesis contains a descriptive part that introduces the international, federal and state approach towards cannabis control. Additionally, the thesis provides an overview of the regulatory framework in Colorado. The thesis will then answer the question whether or not the regulation of cannabis for non-medical purposes undermines the enforcement priorities described by the Department of Justice in the so-called Cole memo.

Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce?

The data from Colorado where legalization of cannabis for non-medical purposes was passed in 2012 are considered, as well as data from other states, such as Washington. Bibliography will contain primary literature such as the Cole memorandum, Control Substance Act, and UN International Drug Control Conventions. The wide source collection aims to provide a balanced assessment on most recent developments.

Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech):

The topic of the thesis has changed. However, since September 2014, I was able to go through various texts related to cannabis control in the US and I consulted each step with the thesis supervisor.

Podpis studenta a datum:

Schváleno	Datum	Podpis
Vedoucí práce		
Vedoucí diplomového semináře		

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Introduction

In November 2012, a popular initiative ballot measure that legalized cannabis for non-medical purposes on the state level (hereafter cannabis legalization) was passed in Colorado State. Since then, adults of 21 years of age and older are allowed to produce, distribute and use cannabis under rigorous regulations. After voters in Colorado expressed their free will and passed the constitution amendment that legalized cannabis, the state became the first to end cannabis prohibition in the United States. The passage of the Amendment 64 to Colorado Constitution was an important change in statewide drug policy for cannabis and had larger implication for the drug policy in the United States. Cannabis control is subject to UN International Drug Control Conventions, of which the United States is a signatory, so the issue was not purely domestic, but had larger international implications.

For more than four decades, the United States vigorously argued in favor of repressive approach to the drug problem and enforced policy that prioritized federal anti-drug law enforcement over prevention, treatment and re-socialization. Despite significant federal, state and local financial incentives to fight the war on drugs, officially declared by President Nixon in 1971, the illicit drug use had been increasing.¹ The cost of the war on drugs is represented by direct monetary expenditure on the law enforcement, as well as in terms of lives, money and the well-being of many US citizens, especially the less educated and poor. The war on drugs aimed to tackle production, distribution and use of all illicit drugs. Yet, cannabis is unique because of its current transition from illegality on state level.

The debate over the legalization of cannabis in the United States is controversial and has been going on for decades. Colorado's "Yes" to legalization represents an important milestone, since similar popular initiatives were defeated in the past, i.e. California's statewide ballot Proposition 19 that would legalize various cannabis-related activities, which was rejected by the voters in 2010. After Colorado, measures legalizing cannabis were passed in Washington, Oregon, Alaska, and Washington D.C. Other states of the United States of America are currently considering cannabis

¹ "DrugFacts: Nationwide Trends." National Institute on Drug Abuse. January 1, 2014. Accessed April 29, 2015. <http://www.drugabuse.gov/publications/drugfacts/nationwide-trends>.

legalization for non-medical purposes. According to the *TIME* magazine, in 2016 election cycle, Nevada, California, Arizona, Maine, and Massachusetts will be considering cannabis legalization.^{2, 3} Change that began in Colorado can lead to terminating cannabis prohibition on federal level.

Cannabis legalization by US jurisdictions represents a clash over federalism, i.e. division of power between states and federal government. Even though the federal government opposes to cannabis legalization it has limited tools how to persuade Colorado voters to withdraw support for legalization. Because of the clash, the federal government is trying to preempt legal disputes by urging states to implement a robust regulatory framework.

This thesis presents the position of the federal government regarding the legalization process on state level. Also, the thesis provides information related to current legal status of cannabis on national level and further discusses the official federal stance towards cannabis legalization. The position of various international institutions that have interest in drug control is also discussed in the thesis. Such a position is important since international drug control system includes cannabis and prohibits cannabis-related activities. Opponents describe legalization of cannabis in states like Colorado as unilateral violation of the UN International Drug Control Conventions.

Colorado was selected for a detailed analysis of the regulatory framework, because compared to Washington, where cannabis legalization went into effect around the same time, Colorado adopted more liberal regulation that allowed, for example, limited home cultivation of cannabis. Colorado liberal approach towards cannabis regulation might create an open conflict with the federal government and other states as well. The thesis includes cases in which Nebraska and Oklahoma are already suing Colorado for its cannabis regulatory measures. The federal government under the Obama administration so far did not interfere with state legalization. The threat that

² Katy, Steinmetz. "These Five States Could Legalize Marijuana in 2016." *TIME Magazine*, March 17, 2015. Accessed April 29, 2015. <http://time.com/3748075/marijuana-legalization-2016/#3748075/marijuana-legalization-2016/>.

³ Also, as of May 2015, twenty three states and Washington D.C. have legalized cannabis for medical use and others are considering to do so. (Source: "23 Legal Medical Marijuana States and DC - Medical Marijuana - ProCon.org." ProCon.org Headlines. Accessed May 13, 2015.)

federal government will take action against cannabis legalization remains possible, if the red line drawn by the Department of Justice is crossed.

More than a year ago, the Amendment 64 went into effect. Time that had passed allows us to identify some risks that are associated with the implementation of cannabis regulatory framework in Colorado. Assessment of the policy design choices in the state is made through the eight Ps model. By using the model, we can predict whether Colorado's regulatory choices will fall within the federal law enforcement requirements. The model, as further explained, was developed by Beau Kilmer who is a leading drug policy researcher at RAND Corporation. The eight Ps model is fully applicable to current regulatory framework in Colorado, because it contains universal questions considered by any jurisdiction that chooses to legalize cannabis. However, Kilmer's model was released before cannabis legalization went into effect. Hence, the model was updated based on recent developments that are associated with cannabis legalization.⁴

Structure, aims and goals

This thesis contains three chapters that address legal aspect of cannabis legalization on state level. Primary focus is devoted to examination of the inconsistency between international, federal and state law regarding cannabis control. Further, the thesis examines the federal approach towards legalization on state level by analyzing key documents such as the Cole memo. This memo stated that only certain cannabis-related activities that are particularly important to the federal government are going to be prosecuted by federal authorities.

Later, the thesis focuses on Colorado that legalized cannabis regardless of the federal prohibition. The state regulatory measures are confronted with the enforcement priorities in order to answer the question whether or not Colorado's regulatory framework undermines those law enforcement priorities described in the Cole memo. Hence, the thesis provides not only comprehensive assessment of the cannabis regulation in Colorado, but confronts this regulation with the federal approach towards cannabis control.

⁴ The eight P's model did not include some important regulatory design questions, i.e. home cultivation, that need to be considered when cannabis regulatory framework is designed.

Features of Colorado's regulatory framework are described, in order to answer the research question: Could policy design choices of Colorado's potentially undermine the federal law enforcement priorities described in the Cole memo? In other words; Is cannabis for non-medical purposes regulated enough in Colorado and what are the regulation's weak spots with respect to the federal law enforcement priorities? The question of different approach to cannabis control is the underlining theme that bounds the individual chapters together.

The first chapter explains in detail that cannabis legalization is not only a domestic issue. After cannabis legalization measures were passed by various US jurisdictions, including Colorado State, the federal government had to respond to this state level legalization. The federal government responded by issuing the Cole memo. Later, the federal government was scrutinized by international organizations such as the International Narcotics Control Board (INCB).⁵ The federal discussion with representatives of INCB is used as an example to provide better understanding of what the Obama administration thought about the legalization process in various US states. Therefore, the first chapter focuses rather on international and national perspective of cannabis legalization. This perspective is important because it directly affects whether Colorado cannabis legalization is likely to succeed or not. The federal government can influence the outcome of cannabis legalization by undoing the legalization process.⁶

The second chapter is related to Colorado cannabis regulatory measures. This chapter focuses on design choices that the state regulators and lawmakers made in order to implement robust regulatory framework for cannabis production, distribution and use. Second chapter also provides a basic comparison of regulatory structures in Washington State and Colorado State. Comparing both states is useful in order to demonstrate the variability of regulatory design choices that each state has. By highlighting differences

⁵ The International Narcotics Control Board (INCB) is the independent and quasi-judicial monitoring body for the implementation of the United Nations international drug control conventions. It was established in 1968 in accordance with the Single Convention on Narcotic Drugs, 1961. It had predecessors under the former drug control treaties as far back as the time of the League of Nations. (Source: INCB, <https://www.incb.org/>)

⁶ For example, if the federal government decide to prosecute cannabis violations based on the federal drug control law that still consider cannabis as illegal substance, federal law enforcement agencies such as Federal Bureau of Investigation (FBI) or Drug Enforcement Agency (DEA) could prosecute anyone who violates the federal law regardless legal status of cannabis on state level.

and similarities between compared state regulatory frameworks, it is possible to demonstrate that Colorado prefers more liberal approach towards cannabis regulation.

The third chapter analyzes and categorizes the regulatory design choices in Colorado State based on the eight Ps model. This chapter provides a necessary overview of the key design choices in order to answer the question whether Colorado cannabis regulation is strong enough to fulfill the law enforcement priorities issued by the Department of Justice. Besides answering the key question, the chapter identifies the weaknesses of cannabis regulation in Colorado and aims to provide recommendations on how to improve cannabis regulation in the state.

This thesis does not argue whether legalization of cannabis is positive or negative. It is premature to evaluate whether cannabis legalization by various US states has a negative impact on public health and security such as an increase in consumption or higher crime levels Cannabis legalization could have positive impact on society such as lower incarceration rates and new tax revenues. Both negative and positive aspects of cannabis legalization are hard to verify since reliable data are still not fully available. Therefore, the goal of the thesis is to provide an analysis of regulatory structure in Colorado, to assess the ambiguity of different national and pro-legalization state approach towards cannabis control. Further, the thesis aims to apply and interpret this ambiguity to cannabis legalization in Colorado.

Methodology, terminology and literature review

Methodology

This thesis is a case study to analyze whether or not cannabis regulation on state level can clash with the law enforcement priorities as described in the Cole memo. Regulation in Colorado illustrates a potential weakness that could result in the federal government challenging legalization process in the state. An independent variable is the law enforcement priorities set by the Department of Justice. The dependent variable is implementation of regulatory measures in Colorado State.

Terminology

In the thesis, cannabis legalization means cannabis legalization for non-medical purposes on state level. This thesis does not deal with cannabis legalization for medical purposes. However, legalization of cannabis for medical use might be mentioned in the thesis – if so, it will be clearly distinguished. Cannabis legalization always refers to legalization on state level because federal law strictly prohibit production, distribution and consumption of the substance. The federal government might reconsider illegal status of cannabis in the future, but as of May 2015, cannabis related activities remain prohibited under the federal law.

This thesis uses the word “cannabis” instead of “marijuana”. Narrower term “marijuana” refers to the dried leaves and flowers of the cannabis plant. The term cannabis is used in order to include other cannabis products such as elixirs, edibles, hash oil, etc.

For the sake of consistency, the term “UN International Drug Control Conventions” is used in the thesis for series of conventions to which the United States is a party. Those conventions control prohibited substances including cannabis. Namely, the term refers to these conventions: Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Literature review

Primary and secondary sources and online informations were gathered from leading government policy and research institutions such as National Institute for Drug Abuse, the White House Office of National Drug Policy Control and the Department of Justice (DoJ). Also, annual reports, opinion papers and press releases from INCB and UNODC were used. The thesis extensively works with primary sources such as the UN International Drug Control Conventions, CSA and DoJ Guidance Regarding the Marijuana Enforcement.⁷ To describe and analyze the parameters of Colorado cannabis regulations, wide range on information from Colorado’s Department of Revenue as well

⁷ James M. Cole "Guidance Regarding the Marijuana Enforcement." August 29, 2013. Accessed March 31, 2015. <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

as other state agencies were gathered. The thesis refers to key cannabis legalization laws and regulatory measures in the state.

In order to provide a balanced approach towards cannabis legalization and subsequent debate, arguments for and against legalization are mentioned in the thesis. Sources for those arguments are drawn from renowned and leading advocacy groups such as National Organization for the Reform of Marijuana Laws (NORML) and nationwide opposing pressure groups such as Smart Approaches to Marijuana (SAM). Public opinion towards legalization of cannabis was interpreted according the survey conducted by the Pew Research Center. Results of ballot initiatives that proposed cannabis legalization were gathered from web page *ballotpedia.org*, which is a project of the Lucy Burns Institute.

This thesis uses two authoritative academic studies that deal with drug policy and legal approach towards cannabis control by various jurisdictions. First study was published by Professor Sam Kamin, law professor from the University of Denver. This study is titled *Cooperative Federalism and State Marijuana Regulation*⁸ and addresses the issue of cannabis legalization on state level. Since Kamin was partially responsible for framing the regulatory measures in Colorado, his study advocates steps towards cannabis legalization taken by Colorado. The second study, co-authored by Wells C. Bennett and John Walsh from Brookings Institution, focuses on the federal and international aspect of cannabis control. Their study titled *Marijuana Legalization is an Opportunity to Modernize International Drug Treaties* provide interesting insight about the federal government position towards cannabis legalization on state level and contextualize this legalization with US international treaty obligations.⁹ Further, various studies from RAND Corporation were considered in this thesis. For example, study *Estimated Cost of Production for Legalized Cannabis* analyzes the impact on price after cannabis is legalized.¹⁰ Previously mentioned *Policy Designs for Cannabis Legalization: Starting with the Eight Ps* published by Beau Kilmer categorize regulatory

⁸ Sam Kamin. "Cooperative Federalism and State Marijuana Regulation." *University of Colorado Law Review* 85, no. 11 (2014).

⁹ Wells Bennett, and John Walsh. *Marijuana Legalization Is an Opportunity to Modernize International Drug Treaties*. Washington, DC: Brookings Institution, 2014.

¹⁰ Jonahtan P. Caulkins. *Estimated Cost of Production for Legalized Cannabis*. Santa Monica: RAND Drug Policy Research Centre, 2010.

design choices and explains impact of those choices on population.¹¹ The thesis uses local newspapers such as The Denver Post as well as nationwide magazine such as The Time in order to provide reflection on cannabis legalization by media. Other scholarly articles and publications were cited in whole thesis.

The wide source collection aims to provide a balanced assessment on most recent developments.

¹¹ Beau, Kilmer. "Policy Designs for Cannabis Legalization: Starting with the Eight Ps." *The American Journal of Drugs and Alcohol Abuse*, 2014. Accessed April 20, 2015. European Monitoring Centre for Drugs and Drug Addiction.

1. Cannabis Control: International, Federal Level and State Level Perspective

Cannabis is a substance whose use is prohibited by federal law under the 1970 Controlled Substances Act (CSA).¹² In November 2012, Colorado and Washington became the first U.S. states to legalize the sale and possession of cannabis for non-medical purposes. Prohibition was replaced with a system that permits cannabis to be legally sold and taxed at state-licensed stores.¹³ This situation is unique as states' legalization of cannabis creates an uncomfortable incoherence between state and federal laws as well as a challenge to the UN International Drug Control Treaties to which United States is a party.

Cannabis legalization debate is heated. Non-profit organization, such as NORML and Drug Policy Alliance (DPA), publically support legalization. They often argue that current repressive approach towards cannabis control failed due to high cost of this repressive policy and dubious results, e.g. rise in consumption and high incarceration for non-violent drug offences. While pressure groups, such as SAM, vigorously oppose any form of legalization by pointing at health consequences of cannabis use. Provisions of the current drug control framework contribute to this heated debate. Particularly worrying is number of incarcerated people in the US which has reached unprecedented numbers. A large number of the CSA offenders end up in state or federal correction facilities. The CSA and the Bank Secrecy Act are the main federal laws that can impose punishment on cannabis producers, distributors and users. Groups on the Colorado supply chain operate in compliance with the recently passed state laws legalizing cannabis.

¹² The Controlled Substance Act, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, is the legal basis of the federal government's fight against the abuse of drugs and other substances. (Source: Citation: Richard Nixon: "Remarks on Signing the Comprehensive Drug Abuse Prevention and Control Act of 1970," October 27, 1970. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=2767>)

¹³ Similar to laws in Oregon and Alaska and Washington D.C. also created a commercial regulatory system for the production, distribution and sale of cannabis. D.C.'s proposal, to legalize cannabis is blocked by Congress which has authority over the city's finances. The Congress prevent the District from using any of its own money or federal funds to regulate the use of cannabis. Therefore, full implementation of the law is not possible.

Various non-profit organizations based in the United States, such as Drug Policy Alliance (DPA) and NORML, argued for cannabis declassification from the CSA. The ultimate goal of the DPA is to reclassify cannabis in order to facilitate research, allow patients to use cannabis for medical purposes and permit legal regulation of cannabis.¹⁴ According to NORML, cannabis prohibition is a failure. The drug consumption patterns indicate that prevalence of drug use has increased despite prohibition and law enforcement's effort to prosecute state and federal drug-related crimes. NORML supports adoption of cannabis legalization laws.¹⁵

The opponents of cannabis legalization, i.e. the anti cannabis-legalization group such as SAM, lead a campaign against cannabis legalization. They say that regular use has adverse health consequences. One of the major health risk is that cannabis can be addictive.¹⁶ Other concerns, as SAM declares, are mental health disorders, increased risk of a heart attack, greater prevalence of bronchitis etc.¹⁷

Anti-cannabis legalization groups, such as such as SAM, National Families in Action, and Citizens Against Legalization of Marijuana, are supported by official position of the federal government which does not encourage any form of legalization. Also, UN agencies such as UNODC and INCB are major opponents of cannabis legalization.¹⁸

1.1 Federal law

Under CSA, the federal law, the use, cultivation, distribution and possession of cannabis is prohibited throughout the United States. From this perspective, state-level legalization of cannabis violates the law and UN International Drug Control

¹⁴ "Marijuana Legalization and Regulation." Marijuana Legalization and Regulation. October 2, 2014. Accessed April 1, 2015. <http://www.drugpolicy.org/marijuana-legalization-and-regulation>.

¹⁵ "NORML.org - Working to Reform Marijuana Laws." Legalization. January 1, 2015. Accessed April 1, 2015. <http://norml.org/legalization>.

¹⁶ According to Nora D. Volkow, Director of the National Institute on Drug Abuse (NIDA), approximately 9 % of those who experiment with cannabis will become addicted. (Source: The New England Journal of Medicine, <http://www.nejm.org/doi/full/10.1056/NEJMr1402309>)

¹⁷ "Marijuana and Health." Smart Approaches to Marijuana. January 1, 2015. Accessed April 11, 2015. <http://learnaboutsam.org/the-issues/marijuana-and-health/>.

¹⁸ Pew Research Center has found growing public support for legalization over the past decade (Source: Pew Research Centre; <http://www.people-press.org/2013/04/04/marijuana-timeline/>)

Conventions.¹⁹ The CSA was adopted by Congress and signed into a law by President Richard Nixon in 1970. This federal law prohibits manufacture, importation, possession, use and distribution of drugs and other substances. Despite this fact, twenty three states and the District of Columbia have legalized cannabis for medical purposes and five states have legalized cannabis for recreational purposes.²⁰ According to CSA, cannabis remains a controlled hallucinogenic substance and a Schedule I narcotic, i.e., a drug with no medical benefits and a high likelihood of addiction. This measure applies to all the states and territories.²¹ The provision of the CSA contradicts the recent findings of scientific community about health benefits of marijuana and is in sharp contrast with arguments posed by legalization advocacy groups.²²

The CSA has been the major obstacle for states seeking cannabis legalization. The Act, introduced in the House of Representatives by Harley O. Staggers (D-WV), strengthens law enforcement authority in the field of drug abuse. The Congressional findings in 21 USC (§ 801 (7), 801a (2), and 801a (3) concluded that a significant purpose of the CSA is to “*enable the United States to meet all of its obligations*” under international drug control treaties.²³

Other federal law that deals with cannabis is the Bank Secrecy Act. This law requires financial institutions and other persons subject to the regulation of the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) to report transactions in connection with cannabis-related business. *The BSA Expectations*

¹⁹ Specifically, the 1961 Single Convention on Narcotics Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance.

²⁰ "NORML.org - Working to Reform Marijuana Laws." Legal Issues. Accessed March 3, 2015. <http://norml.org/legal/legalization>.

²¹ Schedule I substances are defined as: A) The drug or other substance has a high potential for abuse, B) the drug or other substance has no currently accepted medical use in treatment in the United States, C) there is a lack of accepted safety for use of the drug or other substance under medical supervision (Source: The CSA, 14).

The CSA established schedules of controlled substances. Those controlled substances are divided into five schedules. Substance in schedule I, including cannabis, according to the law high potential for abuse, no accredited medical value, and a lack of accepted safety standards. (Source: The CSA, 13-14).

²² Most recently, the American Academy of Neurology released a position paper in support of "efforts to conduct rigorous research to evaluate the long-term safety and effectiveness of marijuana-based products." (Source: CNN; <http://edition.cnn.com/2015/01/07/us/recreational-marijuana-laws/>)

²³ "2010 US Code Title 21 – Food and Drugs Chapter 13 – Drug Abuse Prevention and Control Subchapter I – Control and Enforcement Part A - Introductory Provisions Sec. 801a - Congressional Findings and Declarations: Psychotropic Substances." Justia Law. Accessed March 23, 2015. <http://law.justia.com/codes/us/2010/title21/chap13/subchapi/parta/sec801a>.

Regarding Marijuana-Related Business issued by the FinCEN clarifies requirements for banks and other financial institutions seeking to do business with licensed cannabis operators.²⁴ Without the memo issued by the FinCEN, all financial institutions would have to report to the federal government, if any licensed cannabis operator would open an account in bank. Hence, licensed cannabis operator doing legal business according to state law might be prosecuted.

The CSA was subject to review in light of state ballot initiatives that legalize cannabis under state law. At President Obama's request, the Department of Justice reviewed the cannabis legalization initiatives passed in Colorado and Washington, focusing on contradictions between state and federal law. The result of this review was a Justice Department memorandum that updated cannabis enforcement policy.

1.1.1 DoJ Guidance Regarding Cannabis Enforcement

In 2013, the Department of Justice issued a key guidance for the CSA enforcement after various ballot initiatives legalized cannabis under state laws. The so-called Cole Memo, the full title of which is *the Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* was issued in August 2013 by Deputy Attorney General James M. Cole.²⁵ The memo instructs the US attorneys, in exercising prosecutorial discretion, to take a case-by-case approach by accounting for “whether [a cannabis operation] is demonstrably in compliance with a strong and effective state regulatory system,” and whether it undermines the Department of Justice’s enforcement priorities.²⁶

The Department of Justice enforcement priorities are the following:

- 1) preventing distribution of cannabis to minors;*
- 2) preventing revenue from the sale of cannabis from going to criminal enterprises, gangs, and cartels;*
- 3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states;*

²⁴ "BSA Expectations Regarding Marijuana-Related Businesses." The Financial Crimes Enforcement Network. February 14, 2014. Accessed March 20, 2015.

http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf.

²⁵ Bennett and Walsh, 3.

²⁶ *Ibid.*, 8.

- 4) *preventing state-authorized cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;*
- 5) *preventing violence and the use of firearms in the cultivation and distribution of cannabis;*
- 6) *preventing drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use;*
- 7) *preventing the growing of cannabis on public lands and the attendant public safety and environmental dangers posed by cannabis production on public lands; and*
- 8) *preventing cannabis possession or use on federal property.*²⁷

The Cole memo allowed cannabis legalization laws to go into effect. The Department of Justice repeatedly stated that the CSA remained effective as, without strong regulatory systems, the US attorneys can take action against any individual whose conduct interferes with any law enforcement priority stated above.²⁸

The Office of the Deputy Attorney General also determined under what conditions the enforcement priorities were less likely to be threatened. The memo specifically stated that only in “jurisdictions that have enacted laws legalizing marijuana [cannabis] in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of marijuana [cannabis], conduct compliance with those laws and regulation is less likely to threaten the federal enforcement priorities.”²⁹

The memo created rational guidelines concerning cannabis enforcement under CSA. The federal government is not able address all cannabis-related activity and must rely on state and local law enforcement agencies.³⁰ States’ cannabis legalization initiatives could negatively affect traditional joint federal-state approach to narcotics enforcement. Active enforcement of CSA and ignoring state legalization laws might reduce cooperation between state and federal authorities in field of cannabis control. It is highly desirable for the federal government and law enforcement agencies on all levels in the short term to follow guiding principles described in the memo and leave state enforcement activity to state and local authorities.

²⁷ James M. Cole "Guidance Regarding the Marijuana Enforcement." August 29, 2013. Accessed March 31, 2015. <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

²⁸ Ibid., 1.

²⁹ Ibid., 3-4

³⁰ Ibid., 2.

The federal government has limited investigative and prosecutorial resources. The Department of Justice has not historically devoted resources to prosecute individuals whose conduct was limited to possession of small amounts of marijuana [cannabis] for personal use on private property.³¹ Such low level actions were left to local or state law enforcement. Division of responsibilities allowed the federal law enforcement to address the most significant violations of the CSA in the most rational and effective way.

In the short term, the Cole memo provides guidance for federal prosecutors, prevents possible political debacles, and implements rational drug policy concerning cannabis that reflects current developments in some states. However, in the long term, the federal government will have to deal with a more difficult implication of cannabis legalization. Officials from the Department of Justice and Department of Treasury cannot override the will of US Congress that passed CSA which prohibits cannabis related activities by issuing a memorandum. The US Congress determined that cannabis was a dangerous substance and that its illegal distribution was a crime according to federal law. Therefore, US Congress should reconsider whether cannabis is to be illegal or not after popular initiatives were passed in some US states.

1.2 UN International Drug Control Conventions

The United Nations Drug Control Conventions of 1961, 1971 and 1988 are binding documents for the United States. Hence, a unilateral decision to legalize cannabis in states can undermine the United States' ability to negotiate modification of the UN International Drug Control Conventions.^{32,33} The Article 48 of the 1961 Single Convention on Narcotics Drugs includes an option to bring legal disputes before the International Court of Justice.³⁴ Further, the United States government might be criticized for violation of UN International Drug Control Conventions. Therefore, in the

³¹ Ibid., 2.

³² The first state that legalized cannabis for non-medical use on national level was Uruguay in December 2013.

³³ Bennett and Walsh, 13.

³⁴ The Convention 1961, art 48 (1)-(2)

future, any US call for better compliance with international law could be undermined by US violation of these conventions that have 154 parties.³⁵

According to INCB President, Dr Lochan Naidoo, “the drug control conventions aim to promote and protect public health”.³⁶ UN International Drug Control Conventions, to which the United States is a party, described cannabis as a dangerous and harmful substance. Still relevant and binding Single Convention on Narcotic Drugs, 1961, stated that “addiction to narcotic drugs,” cannabis included, is a “serious evil for the individual,” one “fraught with social and economic danger to mankind”.³⁷ The UN International Drug Control Treaties, cornerstones of international drug control, consider “narcotics drugs,” again including cannabis, to be a “serious threat to the health and welfare of human beings.” The 1988 Convention underscored the negative effects of drugs on “the economic, cultural and political foundation of society.”³⁸

The UN International Drug Control Conventions require all signatories to devote a concerted effort to suppress illicit drug activity as much as possible. According to the Article 4, the 1961 Convention enacts general obligation on the parties, saying that each party “*shall take such legislative and administrative measures as may be necessary: (c) subject to the provisions that production, manufacture, export, import, distribution of, trade in, use and possession of drugs.*”³⁹ This treaty provision to “*enforce all necessary measures*” of course includes cannabis.

1.2.1 International Narcotics Control Board v United States

The US government has maintained that the current development related to the legalization of cannabis by various US states does not affect US treaty obligations. The government “emphasizes the United States’ decades-long commitment to the accords’

³⁵ "United Nations Treaty Collection." UNTC. Accessed May 12, 2015.

https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=vi-15&chapter=6&lang=en.

³⁶ "INCB Warns against Weakening the International Drug Control Legal Framework." INCB. February 2, 2015. Accessed March 31, 2015.

https://www.incb.org/documents/Publications/PressRelease/PR2015/press_release_020215.pdf.

³⁷ Single Convention on Narcotic Drugs, 1961, as Amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, including Schedules, Final Acts and Resolutions as Agreed by the 1961 United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs and by the 1972 United Nations Conference to Consider Amendments to the Single Convention on Narcotic Drugs, 1961, Respectively. New York: United Nations, 1977. 13.

³⁸ Bennett and Walsh, 14.

³⁹ The Convention 1961, 18-19.

broader objectives, while highlighting the flexibility reserved to parties in seeking to achieve the treaties' aims."⁴⁰

INCB, an independent body that oversees the implementation of the UN International Drug Control Conventions, disagreed with the United States' legal arguments that the conventions provide sufficient flexibility to accept cannabis legalization. According to the INCB, the Cole memo issued by the Department of Justice created friction within the UN International Drug Control Convention obligations. Specifically, the Board was displeased by the decision to hold back on the CSA enforcement and found legalization of cannabis on the state level to be a violation of the treaties. INCB Annual Report in 2013 characterized the implementation of Colorado and Washington initiatives as "*not in conformity with the international drug control treaties*" and recommended that the United States "*continues to ensure the full implementation of the international drug control treaties on its entire territory*".⁴¹

Criticism of the United States by the INCB was not aggressive. However, the INCB stated in one of their press releases that "*allowing for the recreational use of cannabis would be a violation of international law, namely the United Nations Single Convention on Narcotics Drugs of 1961, to which the United States is party*."⁴² The former president of the INCB Raymond Yans noted that in the United States, regardless of any changes, growing, selling or possessing any amount of cannabis remained illegal under federal law. Mr. Yans, who could speak more openly, saw this as "*good, but insufficient*" considering cannabis legalization by some of the US states.⁴³

Citing the universal adherence to the UN International Drug Control Conventions, Mr. Yans also called on all Governments to implement all provisions of the conventions to which they were party.⁴⁴ This was particularly directed at the government of the United States. The Board articulated its objections in gentle language, making recommendations and rarely raising sanction issues.⁴⁵ The United

⁴⁰ Bennett and Walsh, 3.

⁴¹ 2013 INCB Annual Report, United Nations: New York, 96.

⁴² INCB Secretariat, *INCB President Calls on the United States Government to address initiatives aimed at permitting recreational drug use*.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ The 1961 Convention enable the Board to "*call the attention of the Parties, to Council and the Commission to the matter*" whenever the "*aims*" of that treaty are "*seriously endangered*" and other

States lack of action has been criticized by former members of INCB. The UN agencies avoided to publically criticize the United States but not in public by any UN institution.⁴⁶

The INCB continues to criticize the U.S. government because of the legalization of cannabis. In February 2015, the INCB warned against weakening of the international drug control legal framework by adoption of legislation and policy measures that were inconsistent with international drug treaties.⁴⁷ While no party to the international treaty was specifically mentioned in the press release, it was issued prior to the legalization of cannabis in Alaska and could thus be interpreted as an effort to create pressure on the federal government to oppose such moves.⁴⁸

Not only the INCB, but also other UN agencies, i.e. UNODC, were irritated with the decision to allow cannabis legalization on the state level. Yury Fedotov, executive director of the UNODC, told reporters: "*I don't see how [the new laws] can be compatible with existing conventions.*"⁴⁹ Even though the UN agencies were irritated, they restrained from harsh criticism. The reason for the lack of overt criticism might be sought in the fact that the United States is a major financial contributor to almost all UN activities, and thus enjoys substantial leverage. Publicly, the UN bodies were displeased rather than infuriated.

The Senate Committee on the Judiciary questioned James M. Cole, Assistant Attorney General, the Department of Justice's position as to whether the policy announced in the Cole Memorandum violated the United States' treaty obligations. Cole responded that

the Department, together with Department of State and the Office of National Drug Control Policy, has met with the INCB... and presented the view of the

remedial efforts have proven ineffective. The INCB shall act if it finds that there is a serious situation that needs cooperative action at the international level with a view to remedying it and that bringing such a situation to the notice of the Parties. Economic and Social Council of the United Nations may draw the attention of the General Assembly to the matter. (Source: 1961 Convention, article XIV (1))

⁴⁶ Bennett and Walsh, 13.

⁴⁷ "INCB Warns against Weakening the International Drug Control Legal Framework." INCB. February 2, 2015. Accessed March 31, 2015.

⁴⁸ INCB Secretariat, *INCB President Calls on the United States Government to address initiatives aimed at permitting recreational drug use.*

⁴⁹ "U.S. States' Pot Legalization Not in Line with International Law: U.N. Agency." Reuters. November 12, 2014. Accessed March 12, 2015. <http://www.reuters.com/article/2014/11/12/us-usa-drugs-un-idUSKCN0IW1GV20141112>.

United States that the enforcement guidance issued on August 29, 2015, does not violate the United States' treaty obligations. Marijuana continues to be Schedule I controlled substance under the federal law, and the Department of Justice is continuing to enforce federal drug laws.⁵⁰

The federal government justified the position not to prosecute certain cannabis users by underlining the priority to maximize the effect of law enforcement. At the same time, James Cole appealed to the UN Convention of 1988 that allows some flexibility in order to increase effectiveness. While this Convention requires the signatories to “*establish* possession, selling, buying or growing of drugs including cannabis as a criminal offense, it also allows signatories to seek flexible interpretations.⁵¹ Therefore, the argument of the federal government to maximize the effect of law enforcement seemed logical and in accordance with the provision of the 1988 Convention.

Further explanation why the United States considers itself to be in compliance with UN International Drug Control Conventions can be found in remarks by William Brownfield, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs. In a panel discussion organized by the Center for Strategic and International Studies in March 2014, Brownfield stated that the federal government offered *substantial* discretion to individual US states as the best means of carrying out the treaties' objectives, i.e. to prosecute major drug offences.⁵² Moreover, he asserted the United States' right to decide how to efficiently allocate its scarce law enforcement resources. To support his argument, Brownfield referred to the treaties' recognition of parties' constitutional limitation, i.e. if a nation's constitution prohibited adoption of provisions called for by UN International Drug Control Conventions, those provisions would not be binding on that nation.⁵³ Federalism represents is limitation and often

⁵⁰ "United States Senate Committee on the Judiciary." Meeting. June 11, 2014. Accessed March 25, 2015. <http://www.judiciary.senate.gov/meetings/oversight-of-the-department-of-homeland-security-2014-06-11>.

⁵¹ 1988 Convention, 3. The Convention states that “*the Parties shall endeavor to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences, and with due regard to the need to deter the commission of such offences.*” (Source: 1988 Convention, 4)

⁵² Commentary on the Single Convention on Narcotic Drugs. New York: United Nations, 1973. 49-74.

⁵³ "Single Convention on Narcotic Drugs of 1961 as Amended by the 1972 Protocol." In *The International Drug Control Conventions*, 99. New York: United Nations Office on Drugs and Crime, 2013. "Centre for Strategic and International Studies." March 31, 2014. Accessed March 25, 2015. <http://csis.org/multimedia/video-focus-international-drug-policy-debate>.

prevents the United States' federal government from challenging individual states to enforce federal law or to enact particular policies.

According to Brownfield, the United States, with the international community, should build an international consensus related to transnational drug control founded on four premises. The first premise is to defend the integrity of the treaties, i.e. preventing creation of new drug control treaties, and perhaps not changing the old ones. Secondly, he argues in favor of flexible interpretation. Another premise was to tolerate different national strategies or policies; his fourth premise was to counter international criminal networks.⁵⁴ This fourth pillar together with his previous statements about substantial discretion made it clear that the government in Washington D.C. was convinced that the treaties give the United States enough room to allow the cannabis legalization in individual states.

The necessity to defend treaty integrity was restated by President Obama in his public announcement of September 2014 in which he mentioned that

the United States supports the view of most countries that revising the U.N. drug conventions is not a prerequisite to advancing the common and shared responsibility of international cooperation designed to enhance the positive goals we have set to counter illegal drugs and crime.⁵⁵

The Obama administration did not seek any significant changes that would threaten the existing system of international drug-control based on transnational cooperation embodied in the conventions. However, some flexibility of UN International Drug Control Conventions is needed in order to justify steps of the federal government, such as the Cole memo.

1.3 Obama administration

The Obama administration's response to state initiatives to legalize cannabis is pragmatic. Even though the federal government could undo state initiative by preemptive lawsuits or local intensification of federal enforcement, such conduct would

⁵⁴ William Brownfield, LiveAtState: Drug Policy Reform in the Hemisphere, June 26, 2013.

⁵⁵ "Presidential Determination -- Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2015." The White House. September 15, 2014. Accessed March 31, 2015. <https://www.whitehouse.gov/the-press-office/2014/09/15/presidential-determination-major-drug-transit-or-major-illicit-drug-prod>.

be costly and ineffective. The capacity of federal law enforcement to suppress cannabis sale and distribution without close cooperation from the states and local governments is limited. More than 95 percent of cannabis-law arrests are made by state and local police.⁵⁶ Federal officials declared in the past that federal resources were going to be spend on “targeting and eliminating root and branch of major drug organizations.”⁵⁷ If federal resources are diverted to low-profile drug abuse, it will undermine efforts to control major criminal acts.

Even though the CSA directs that access to certain substances should be restricted or prohibited, the Act gives a mandate to the US Attorney General to cooperate with the state and local governments in enforcing drug laws, and gives him/her the power “to enter into contractual agreements [...] to provide for cooperative enforcement and regulatory activities.”⁵⁸ This provision forms the legal basis for the Obama administration’s non-interventionist position with respect to state level non-medical cannabis legalization.

According to Wells C. Bennett and John Wash, an aggressive push by federal government to counteract state efforts to legalize cannabis could constitute a political debacle for the Obama administration.⁵⁹ Others have argued that the 10th Amendment to the US Constitution does not allow the federal government to criminalize cannabis and command the states to enforce federal laws criminalizing it.⁶⁰ The 10th Amendment emphasizes that the federal government cannot force state or local governments to act against their will. The doctrine is well established in constitutional jurisprudence.

There are legal precedents that might play a role in the federal government’s decision not to enforce the CSA. One of them is *Printz v. United States*, 521 U.S. § 898, § 933 (1997), a landmark decision, which holds that local law enforcement officials cannot be required to participate in a federal regulations Hence, the federal government cannot order US states to address particular problems such as cannabis related violation

⁵⁶ "Q&A: Legal Marijuana in Colorado and Washington." The Brookings Institution. May 21, 2013. Accessed April 14, 2015. <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington>.

⁵⁷ John Ashcroft. "DEA/Drug Enforcement Rollout." March 19, 2002. Accessed March 25, 2015. <http://2001-2009.state.gov/p/inl/rls/rm/9233.htm>.

⁵⁸ The CSA, <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm>

⁵⁹ Bennet and Walsh, 4.

⁶⁰ Kamin, 1110-1111

of the CSA. Another example is *New York v. United States*, 505 U.S. § 144, § 177 (1992) where the US Supreme Court ruled that the federal government could not “commandeer” state governments to legislate in a particular area.⁶¹ This decision prohibits the federal government from forcing US states to repeal their laws legalizing cannabis.

The federal government does have options to overcome states’ approach towards cannabis control. Federal authorities can enforce federal laws. Such enforcement would undermine state efforts to legalize cannabis. Cannabis users who use it in accordance with state law could face the prison terms under federal law and their assets could be subject to forfeiture under the CSA and Bank Secrecy Act.⁶² Moreover, the federal government could undo the initiatives calling for the establishment of regulatory apparatuses for regulation of cannabis products by pursuing legal action founded on the federal preemptive doctrine.⁶³ US Supreme Court could decide in case of cannabis legalization whether the anti-commandeering doctrine would overruled the supremacy clause, that establishes the Constitution, federal laws, and treaties as "the supreme law of the land."⁶⁴ The thinking was that the federal government could ask the Court to declare that CSA effectively prevents implementation of popular initiatives and ballot measures that legalize cannabis, such as the Initiative 502 in Washington and Amendment 64 in Colorado. Also, federal prosecutors could make an example of an offender who sold, possessed or bought cannabis in compliance with state law but in violation of the federal law.

Following the passage of legalization initiatives in Colorado and Washington, governors of both states appealed to the federal government for assurances that the federal law enforcement would not undo their cannabis legalization efforts. The

⁶¹ Ibid., 1107-1108.

⁶² The CSA states that all assets being used in the violation of the Act is subject to forfeiture: “All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or track of land any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year’s imprisonment. (source: The CSA, § 881. Forfeitures)

⁶³ When state law and federal law conflict, federal law displaces, or preempts, state law, due to the Supremacy Clause of the Constitution. U.S. Const. art. VI., § 2. Preemption applies regardless of whether the conflicting laws come from legislatures, courts, administrative agencies, or constitutions. (Source: Cornell University Law School; <https://www.law.cornell.edu/wex/preemption>)

⁶⁴ "Article VI - U.S. Constitution." Cornell University Law School. January 1, 2015. Accessed April 12, 2015. <https://www.law.cornell.edu/constitution/articlevi>.

governors feared that the Obama administration might “sue [...] the implementation of the regulatory regime as preempted by the CSA.”⁶⁵ The federal government then provided enforcement guidance when Deputy Attorney General James Cole declared in his memorandum that the Department of Justice would not block the implementation of cannabis legalization in Colorado and Washington.⁶⁶

According to Sam Kamin, author of *Federalism and Marijuana Regulation*, was Barack Obama’s presence on the ballot in 2012 influenced the administration decision not to interfere as voters in Colorado and Washington considered cannabis legalization in 2012. Before, in 2010, California ballot known as Proposition 19 was defeated. The Attorney General Eric Holder, a senior official in the Obama administration, then wrote a letter expressing the administration’s strong opposition to Proposition 19 that would legalize cannabis for non-medical purposes in California.⁶⁷ However, challenging the legalization initiatives in 2012 could have had negative results alienating young voters in the 2012 presidential elections. The shift in public opinion to favor legalization of cannabis was expected to influence the federal government’s decision not to act in 2012.⁶⁸ ⁶⁹ Marijuana Majority, an advocacy group, estimated that 58 percent of US citizens would approve of legalization of cannabis.⁷⁰ Those citizens oppose federal interference with any state’s drug policy.⁷¹ For example, *Pew Survey* conducted in March 2013 showed that 57 percent of Republicans say that the federal government

⁶⁵ Kamin, 1111.

⁶⁶ The precedence for the federal government way of conduct is the Ogden Memo. It was issued in 2009 by Deputy Attorney General David Ogden. This memorandum to United States Attorneys offered guidance on how to approach the widespread distribution of cannabis in the states that legalized medical use of cannabis. The Ogden memo specifically stated that the Department of Justice would continue to use its resources against those engaged in the production and distribution of prohibited substances it was not believed it would be wise to use scarce prosecutorial resources to pursue individuals *whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of cannabis*. (Source: The Ogden Memo).

⁶⁷ Steve, Gorman. "Attorney General Holder Opposes California Marijuana Bill." *Reuters*, October 16, 2010. Accessed April 12, 2015. <http://www.reuters.com/article/2010/10/16/us-usa-marijuana-california-idUSTRE69F03V20101016>.

⁶⁸ Kamin. 1110.

⁶⁹ Conor Friedersdorf. "When States Dare to Decide on Medical Marijuana." *The Atlantic*. March 10, 2015. Accessed March 16, 2015. <http://www.theatlantic.com/politics/archive/2015/03/Senators-Rand-Paul-Cory-Booker-Kirsten-Gillibrand-Bill-End-federal-ban-Medical-Marijuana/387346/>.

⁷⁰ "Jon Stewart Is Part of the Marijuana Majority. Are You?" Marijuana Majority. Accessed March 14, 2015. <https://www.marijuanamajority.com/?id=663>.

⁷¹ William A. Galston, and E. J. Dione. *The New Politics of Marijuana Legalization: Why Opinion Is Changing*. Washington, D.C.: Brookings Institution, 2013.

should not enforce CSA in states that have legalized cannabis.⁷² A *USA Today Gallup* poll carried out after the popular ballot measures were passed in Colorado and Washington in November 2012 found that 64 percent of U.S. citizens opposed federal intervention in states that legalized cannabis. Federal intervention to override state laws legalizing use of non-medical cannabis was widely unpopular.⁷³

In December 2012, President Obama was asked in an *ABC* interview about the administration stance on the state laws that legalized non-medical use of cannabis. He responded that voters' had the right to speak on this issue. He also stated that "it does not make sense from a prioritization point of view for us to focus on recreational drug users in a state that has already said that under state law that's legal."⁷⁴

Most likely, the federal government's limited prosecutorial resources played role in the Obama administration's decision to hold off from enforcing the CSA provision related to cannabis law enforcement.

1.4 Nebraska and Oklahoma v. Colorado

After the passage of the Initiative 502 in Washington and Amendment 64 in Colorado, the opposition to cannabis legalization increased. In December 2014, Nebraska and Oklahoma filed a federal lawsuit in the U.S. Supreme Court (SCOTUS) against Colorado over cannabis legalization. The two plaintiff states claim to have suffered increased costs from enforcing federal law that prohibits use and possession of cannabis, i.e. "arrests, the impoundment of vehicles, the seizure of contraband, the transfer of prisoners, and other problems associated with marijuana."⁷⁵

Nebraska and Oklahoma v. Colorado is one of four lawsuits that have been filed against Colorado over its cannabis laws. One lawsuit, filed by sheriffs from Colorado,

⁷² "Majority Now Supports Legalizing Marijuana." Pew Research Center for the People and the Press RSS. April 4, 2013. Accessed March 25, 2015. <http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>.

⁷³ Frank, Newport. "Americans Want Federal Gov't Out of State Marijuana Laws." Americans Want Federal Gov't Out of State Marijuana Laws. December 10, 2010. Accessed April 14, 2015. <http://www.gallup.com/poll/159152/americans-federal-gov-state-marijuana-laws.aspx>.

⁷⁴ Barack Obama, "Addressing the Legalization of Marijuana." Addressing the Legalization of Marijuana. December 1, 2013. Accessed March 24, 2015. <https://petitions.whitehouse.gov/response/addressing-legalization-marijuana>.

⁷⁵ John, Ingold. "Nebraska and Oklahoma Sue Colorado over Marijuana Legalization." The Denver Post, December 18, 2014. Accessed May 5, 2015. http://www.denverpost.com/news/ci_27163543/nebraska-and-oklahoma-sue-colorado-over-marijuana-legalization.

Nebraska and Kansas, seeks to overturn Colorado's legal cannabis law. Anti-cannabis legalization pressure group, Safe Streets, and three other plaintiffs filed two other suits. These target a number of Colorado lawmakers, including Gov. John Hickenlooper, for their involvement in establishing a regulated cannabis market. The plaintiffs in this suit declare that Gov. Hickenlooper and other state officials, i.e. Department of Revenue executive director Barbara Brohl, are breaking federal law.

The Attorneys General who filed the lawsuit Colorado v Nebraska and Oklahoma, Jon Bruning of Nebraska and Scott Pruitt of Oklahoma, both claimed that it is hard to enforce a federal ban on cannabis when the drug entered their borders from neighboring Colorado.⁷⁶ They wanted to strike down Colorado's strong cannabis regulatory system that protected the users, distributors and sellers from federal law prosecution. The tactic of the plaintiff states was to acknowledge that legalizing cannabis was "a decision any state may make with respect to its own criminal law."⁷⁷ However, Nebraska and Oklahoma's authorities at the same time argued that Colorado did not have authority to pass laws that conflict with the federal prohibition on cannabis. According to the complaint, Colorado violated the Supremacy Clause of the Article VI of the Constitution.⁷⁸

Pressure groups opposed to cannabis legalization welcomed the lawsuit. According to the Institute for a Drug-Free Workplace, experience from cannabis legalization in other nations provides a sound basis to reject legalization in the US. Kevin Sabet, a co-founder of the SAM, said legalization of cannabis "is clearly a violation of the federal Controlled Substances Act (CSA)."⁷⁹

Sam Kamin, a University of Denver professor who advised Colorado on its regulations, believes the lawsuit does not represent a challenge to Colorado's ability to legalize cannabis possession or use. The complaint focuses on state regulations of

⁷⁶ Segal, Corinne. "Nebraska, Oklahoma Sue Colorado over Legalized Marijuana." PBS. December 19, 2014. Accessed March 30, 2015. <http://www.pbs.org/newshour/rundown/nebraska-oklahoma-sue-colorado-legalized-marijuana/>.

⁷⁷ John, Bruning, and Scott E., Pruitt. *Motion For Leave To File Complaint, Complaint, and Brief in Support*. Washington, D.C., 2014.

⁷⁸ Matt, Ferner. "Nebraska, Oklahoma File Federal Suit Against Colorado Over Marijuana Legalization." *The Huffington Post*, December 18, 2014. Accessed April 1, 2015.

⁷⁹ Charlotte Alter. "Nebraska and Oklahoma Are Trying to Kill Colorado's Buzz." Kevin Sabet. December 30, 2014. Accessed May 12, 2015. <http://kevinsabet.com/nebraska-and-oklahoma-are-trying-to-kill-colorados-buzz>.

cannabis and commercial sale.⁸⁰ If the US Supreme Court strike down Colorado's cannabis regulatory measures the state effectively loses its ability to comply with the law enforcement priorities issued by the Department of Justice. Regulation is crucial if the US is to refrain from targeting state-legal cannabis operations. The federal government would have to act and Colorado would have to reconsider its decision to legalize cannabis. If the complaint succeed, Amendment 64 will be still in place, but the state could lose its ability to regulate cannabis related activities.

Such a forceful stance by Nebraska and Oklahoma to prevent Colorado's legalization of cannabis upset Colorado officials. In March 2015, Colorado Attorney General Cynthia Coffman asked the SCOTUS to reject the lawsuit and issued *Colorado's Brief Opposition to Motion for Leave to File Complaint*, in which the defendant argued that Colorado had not invaded any sovereign rights of the plaintiff states.⁸¹ Washington State, which legalized cannabis use for adults 21 and over in November 2012, supported Colorado and criticized the action taken by Nebraska and Oklahoma. Washington's Attorney General Bob Ferguson, said that he would, "vigorously oppose any effort by other states to interfere with the will of Washington voters."⁸²

The complaint in *Nebraska and Oklahoma v. Colorado* has not yet been resolved. It however reveals the complexity of cannabis legalization by states. Colorado acted to oppose the motion to file the lawsuit. According to Lyle Dennison, independent reporter, "it is likely that the Court will ask the U.S. Solicitor General for the federal government's views before taking on the case, because federal laws are directly implicated."⁸³ US Supreme Court might also decide to drop the case because the Obama administration did not actively enforce the CSA provisions related to cannabis. The US Solicitor General will most likely provide more reasons why the Court should drop the

⁸⁰ John, Ingold. "Nebraska and Oklahoma Sue Colorado over Marijuana Legalization." *The Denver Post*, December 18, 2014. Accessed April 12, 2015. http://www.denverpost.com/news/ci_27163543/nebraska-and-oklahoma-sue-colorado-over-marijuana-legalization.

⁸¹ Cynthia H., Coffman. *Colorado's Brief in Opposition to Motion For Leave To File Complaint*. Washington, D.C., 2015. 35-48.

⁸² John, Ingold. "Nebraska and Oklahoma Sue Colorado over Marijuana Legalization." *The Denver Post*, December 18, 2014. Accessed April 12, 2015. http://www.denverpost.com/news/ci_27163543/nebraska-and-oklahoma-sue-colorado-over-marijuana-legalization.

⁸³ Denniston, Lyle. "Two States Sue to Block Colorado Marijuana Markets." SCOTUSblog RSS. December 19, 2014. Accessed April 7, 2015. <http://www.scotusblog.com/2014/12/two-states-sue-to-block-colorado-marijuana-markets/>.

case. His action would then be in accordance with the federal government policy as framed by the Cole memo.

2. Colorado cannabis regulatory framework

US states that legalized cannabis implemented or will implement regulations to fulfill requirements of the Department of Justice. This section focuses on Colorado. The following paragraphs will also compare regulatory frameworks in Colorado and Washington in order to underline the fact that regulation of non-medical cannabis can differ from state to state

As of June 2014, the use of cannabis for medical purposes has been legalized in 23 states and the District of Columbia. The drug remains illegal under the federal law.^{84, 85} Scientific research has led to introducing medications that contain cannabinoid chemicals approved by the Food and Drug Administration.⁸⁶ Even though cannabinoids have some medical value and can be used for treatment, so-called recreational use should be discouraged by the government. Frequent use of cannabis has adverse health effects and strong regulation should be encouraged.⁸⁷

Ballot initiatives that initiated legalization of cannabis for personal consumption mandated that rules for retailers, processors and producers have to be in place. The Cole memo also ordered US states to implement a strong regulatory system before adoption of any law that would legalize cannabis. The drug can be harmful to individuals and a regulatory system is needed to prevent a cannabis consumption increase. Governor John Hickenlooper of Colorado said during the National Governors Association meeting in February 2014: "We don't know what the unintended consequences are going to be and we're going to regulate it [cannabis] every way we can."⁸⁸

⁸⁴ Conor, Friedersdorf. "When States Dare to Decide on Medical Marijuana." *The Atlantic*, March 10, 2015. Accessed April 5, 2015.

⁸⁵ In spring 2015, Senator Rand Paul, a Republican, and Democratic Senators Cory Booker and Kirsten Gillibrand introduced a bipartisan bill that would allow patients, doctors and businesses in states that have already passed medical cannabis laws to participate in those program without fear of federal prosecution. (Source: The Atlantic, When States Dare to decide on Medical Marijuana).

⁸⁶ "DrugFacts: Is Marijuana Medicine?" DrugFacts: Is Marijuana Medicine? April 1, 2015. Accessed April 6, 2015. <http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine>.

⁸⁷ "DrugFacts: Is Marijuana Medicine?" National Institute on Drug Abuse. April 1, 2015. Accessed May 12, 2015. <http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine>.

⁸⁸ Dan, Balz. "Colorado Governor Urges Other States to 'be Cautious' about Pot Legalization." *The Washington Post*, February 21, 2014. Accessed April 8, 2015. <http://www.washingtonpost.com/blogs/post-politics/wp/2014/02/21/colorado-governor-urges-other-states-to-be-cautious-about-pot-legalization/>.

2.1 The Case of Colorado

In January 2012, supporters of a proposed initiative named *Use and Regulation of Marijuana*, submitted a petition with 163,632 signatures in favor of legalization of recreational use of marijuana. After verification of each submitted signature, the petition was declared inadequate. The proponents then submitted additional 14,151 signatures. After review, it was determined that a sufficient number of valid signatures have been submitted and the proposed initiative should be certified to the November 6, 2012, General Election ballot.⁸⁹ The initiative was numbered Amendment 64.

Since the enactment of Amendment 64, Colorado has two sets of policies related to cannabis use: one is for medical use, the other of non-medical⁹⁰ Amendment 64 legalized personal use, possession, and limited home growing of cannabis for adults older than 21 years; established a regulatory framework; and allows for the cultivation, processing and sale of industrial hemp.⁹¹ Amendment 64 removed all legal penalties for home growing of up to six cannabis plants in an enclosed space for personal use of up to one ounce of cannabis. Under the provisions of the measure, it is also possible to legally open cultivation facilities, retail stores and other establishments that are part of cannabis infrastructure.⁹² Retail stores and other cannabis establishments have to submit complete application, pay fees and pass inspection process in order to obtain business license.⁹³

In December 2012, Governor Hickenlooper signed Executive Order B 2012-004 to create a Task Force on the Implementation of Amendment 64. The Governor directed the Task Force “to identify the legal, policy, and procedural issues that must be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken, for the effective and efficient implementation of

⁸⁹ Scott, Gessler. "Statement of Sufficiency: Proposed Initiative 2011-2012 #30." State of Colorado - Department of State. February 27, 2012. Accessed April 9, 2015.

<http://www.sos.state.co.us/pubs/elections/Initiatives/ballot/Statements/2012/SufficiencyProp30.pdf>.

⁹⁰ "Marijuana Enforcement." Colorado Department of Revenue. January 1, 2015. Accessed April 9, 2015. <https://www.colorado.gov/pacific/enforcement/marijuanaenforcement>.

⁹¹ "Amendment 64 - Use and Regulation of Marijuana." In *Constitution of the State of Colorado*. Denver: State of Colorado, 2012. 3-5.

⁹² *Ibid.*, 3.

⁹³ "Denver Business Licensing Center." Denver Marijuana Laws & Retail Licenses. Accessed May 13, 2015.

<http://www.denvergov.org/businesslicensing/DenverBusinessLicensingCenter/RetailMarijuana/tabid/445028/Default.aspx>.

Amendment 64.”⁹⁴⁹⁵The Task Force provided extensive drug policy recommendations to the Colorado General Assembly.

2.1.1 Horizontal regulation

Horizontal regulation refers to all provisions that are associated with a wide range of cannabis related permanent state rules. A sample of these permanent rules are health and safety regulations follows: responsible vendor program,⁹⁶ mandatory sampling and testing program, labeling, packaging, and product safety.⁹⁷ The latter requires all cannabis retail stores and cannabis manufacturing facilities to allow state inspections “by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present,”⁹⁸ A robust regulatory framework was implemented to comply with the Cole memorandum.

Labeling requirements provide detailed information about the product to consumers. Every retail cannabis product manufacturing facility must ensure that license number of the retail cannabis cultivation facility is affixed to every container holding a retail cannabis product. Each container must be labeled with net weight, child resist certificate, a warning, a complete list of all nonorganic pesticides, fungicides, and herbicides used during cultivation and a complete list of solvents and chemicals used in the creation of any retail cannabis concentrate that was used to produce it.⁹⁹

⁹⁴ *Task Force Report on the Implementation of Amendment 64 Regulation of Marijuana in Colorado*. Denver, Colo.: Colorado Amendment 64 Implementation Task Force, 2013. 4.

⁹⁵ „B 2012 – 004 Executive Order.“ Colorado State: Office of the Governor. December 10, 2012. Accessed May 13, 2015.

⁹⁶ “The purpose of this rule is to establish minimum standards for responsible vendor program that provide training to personnel at Retail Marijuana Stores.” (Source: R 407) Responsible vendor program is not mandatory, but some providers of this program, for example company iComply published on their website that “By becoming a Responsible Vendor through our courses, business owners may legally mitigate the offenses against their license” (Source: iComply, <http://icomplycannabis.com/medical/9-medical-marijuana/14-medical-staff-training.html>)

⁹⁷ "R 504 – Retail Marijuana Cultivation Facility: Health and Safety Regulations." In *Permanent Rules (R103, R211, R307, R406, R504-505, R604-605, R712, R1501-1507) Effective March 2, 2014*, 18-19. Denver, Colorado: Colorado General Assembly, 2014.

⁹⁸ "R 406 –Retail Marijuana Store: Health and Safety Regulations." In *Permanent Rules (R103, R211, R307, R406, R504-505, R604-605, R712, R1501-1507) Effective March 2, 2014*, 18-19. Denver, Colorado: Colorado General Assembly, 2014.

⁹⁹ In Colorado, one of following warning statements have to be placed on the container by cannabis manufacturing facility: „(i) There may be health risk associated with consumption of this product, (ii) This product is infused with marijuana, (iii) This product was produced without regulatory oversight for health, safety, or efficacy, (iv) The intoxication effects of this product may be delayed by two or more hours, (v) There may be additional health risks associated with the consumption of this product of women

Edible retail cannabis products have further requirements. For example, packages must include an ingredients list and a nutrition fact panel based on the number of THC servings within the container. New requirements for packaging and labeling of retail cannabis products were effective in February 2015 for all cannabis-manufacturing facilities.¹⁰⁰ Stores selling the finished product also have packaging obligations. They must affix information regarding the date of sale, a warning statement, and the license number of the retail cannabis store that sold the retail cannabis to the consumer.^{101 102}

The Department of Revenue has a mandate to regulate the distribution, production and system of cultivation on the horizontal level.¹⁰³ The Department includes four divisions: an Enforcement division which contains five separate Divisions include Marijuana Enforcement Division (MED).¹⁰⁴ According to the Official Department of Revenue web site, “the mission of the Enforcement Division is to uniformly enforce Colorado law [...] through education, compliance, administration and criminal enforcement.”¹⁰⁵ This system incorporates MED into existing bureau. This systematic step allow Divisions of the Department of Revenue to cooperate and enforce regulations more effectively.

who are pregnant, breastfeeding, or planning on becoming pregnant, (vi) Do not drive a motor vehicle or operate heavy machinery while using marijuana” (R 1004.5 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility)

¹⁰⁰ *R 1004.5 – Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility*. Denver, Colorado: Colorado General Assembly, 2014. 1-4.

¹⁰¹ In Colorado, one of following warning statements have to be placed on the container by store selling cannabis: “(i) There may be health risks associated with the consumption of this product, (ii) This product is intended for use by adults 21 years and older. Keep out of the reach of children, (iii) This product is unlawful outside the State of Colorado, (iv) This product is infused with marijuana, (v) This product was produced without regulatory oversight for health, safety, or efficacy, (vi) The intoxicating effects of this product may be delayed by two or more hours, (vii) There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant, (viii) Do not drive a motor vehicle or operate heavy machinery while using marijuana.”

(Source: R 1006.5 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store)

¹⁰² *R 1006.5 – Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store*. Denver, Colorado: Colorado General Assembly, 2014. 4-7.

¹⁰³ “Marijuana Enforcement.” Colorado Department of Revenue. January 1, 2015. Accessed April 9, 2015. <https://www.colorado.gov/pacific/enforcement/marijuanaenforcement>.

¹⁰⁴ The General Assembly in Colorado converted the Medical Marijuana Enforcement Division into a new Marijuana Enforcement Division. This was done with compliance to recommendations issued by the Task Force on the Implementation of Amendment 64. (Source: Task Force Report on Implementation of Amendment 64, <http://www.colorado.gov/cms/forms/dor-tax/A64TaskForceFinalReport.pdf>)

¹⁰⁵ “Enforcement.” Colorado Department of Revenue. January 1, 2015. Accessed April 12, 2015. <https://www.colorado.gov/pacific/enforcement>.

MED oversees licensing of Colorado cannabis industry and enforces Colorado's cannabis control laws. MED has four offices with headquarter in Denver. As mentioned, Colorado has two sets of laws related to cannabis MED is tasked with licensing and regulating both the medical and retail cannabis industries in Colorado.¹⁰⁶ MED has responsibility to "implement legislation, develop rules, conduct background investigation, issue licenses for businesses and enforce compliance mandates in order to maintain a robust regulatory system" and represent the principal state licensing and regulatory authority.¹⁰⁷

2.1.2 Vertical regulation

Vertical regulation refers to multi-level regulatory framework that, in the case of cannabis, allows localities to create and enforce their own regulation. The local governments "*have the right to ban [cannabis] establishments through either their elected representative bodies, or through referred or citizen-initiated ballot measures.*"¹⁰⁸ Municipalities or counties can regulate various aspects of cannabis use, distribution and possession.

In February 2014, thirty-three municipalities and counties have approved ordinances temporarily or permanently banning retail of cannabis after the approval of the Colorado's constitution amendment that legalized cannabis on the state level.¹⁰⁹ Thus statewide legalization of cannabis can be modified by elected local representatives as in Colorado Springs, second most populous city in Colorado and home of the United States Air Force Academy, or by popular initiative and referendum.¹¹⁰ The Colorado Constitution, Article V, Section 1 (9) reserves the initiative and referendum powers to the registered voters of every, city, town and municipality.

¹⁰⁶ "Marijuana Enforcement." The Department of Revenue. January 1, 2015. Accessed April 12, 2015. <https://www.colorado.gov/pacific/enforcement/marijuanaenforcement>.

¹⁰⁷ Ibid.

¹⁰⁸ "Overview of Amendment 64." Yes on 64: The Colorado Campaign to Regulate Marijuana Like Alcohol. February 1, 2012. Accessed April 9, 2015. <http://www.regulatemarijuana.org/about>.

¹⁰⁹ "City of Manitou Springs Retail Marijuana Ban, Measure 2G (November 2014)." Ballotpedia. November 14, 2014. Accessed April 13, 2015.

[http://ballotpedia.org/City_of_Manitou_Springs_Retail_Marijuana_Ban,_Measure_2G_\(November_2014\)](http://ballotpedia.org/City_of_Manitou_Springs_Retail_Marijuana_Ban,_Measure_2G_(November_2014))).

¹¹⁰ "Colorado Springs Leaders Vote against Retail Pot." *The Denver Post*, July 23, 2013. Accessed April 13, 2015. http://www.denverpost.com/news/marijuana/ci_23712774/colorado-springs-poised-ban-retail-pot.

The following example demonstrates how the referendums on cannabis legalization or prohibition. In the November, 2014 elections, the question whether to ban cannabis was on the election ballot for voters in the city of Manitou Springs in El Paso County, Colorado. The measure was proposed by a group called *No Retail Marijuana in Manitou Springs*. Their initiative was to prevent the Manitou City Council from allowing any cannabis related activity. This would not permit a system of state licensed businesses engaged in the cultivation, testing, manufacturing, and retail sale of cannabis, to operate inside the city. Election results were negative for opponents, as the measure titled *City of Manitou Springs Retail Marijuana Ban* was defeated. While Colorado Springs prohibits non-medical cannabis sale, Manitou Springs allows retail sale of cannabis and was the first city in El Paso County to do so.¹¹¹

Local governments in Colorado can also determine regulations in their jurisdictions. Local governments have authority to regulate or ban cannabis establishments. Additionally, localities are able to engage in local licensing of cannabis establishments. Those provisions have a legal base in provisions of the Colorado Retail Marijuana Code, Article 43.4 of Title 12.¹¹² For instance, it is legal under the Colorado state law for adults to travel with up to one ounce of cannabis. In Denver, the largest city and capitol of Colorado, but the only people authorized to transport cannabis or cannabis products are those licensed by the State Licensing Authority and Denver Excise & Licenses.¹¹³

2.1.3 Taxation

The retail price of cannabis is an important factor that influences overall consumption. In order to prevent significant increase in cannabis consumption, Colorado taxes the drug.

To set the correct price is very important. Low prices will encourage consumption and out-of state export while high prices allow for the black markets to grow. To prevent either, balanced taxation is needed. Kamin said in an interview, “[w]e

¹¹¹ "City of Manitou Springs Retail Marijuana Ban, Measure 2G (November 2014)." Ballotpedia. November 14, 2014. Accessed April 13, 2015.

¹¹² [http://ballotpedia.org/City_of_Manitou_Springs_Retail_Marijuana_Ban,_Measure_2G_\(November_2014\)](http://ballotpedia.org/City_of_Manitou_Springs_Retail_Marijuana_Ban,_Measure_2G_(November_2014)).

¹¹³

want [...] regulation that is robust, but we don't want the price of legal marijuana so much higher than the black market that it becomes attractive again."¹¹⁴

In 1992, Colorado voters denied from their state legislature the power to tax by reserving that power to citizens so a referendum or a citizen initiative, are required are to impose specific taxes on adult-use of cannabis. The Colorado constitution contains a provision called the Taxpayer Bill of Rights that restrains the state's ability not only to tax, but also to spend taxpayer's money. After the legalization of cannabis in Colorado, voters approved the use of cannabis sale tax money for drug education, schools, and police. The *Marijuana Tax Cash Fund* was created in order to deposit all tax revenue from both medical and non-medical cannabis.¹¹⁵ However, tax money might not serve for these programs, as cannabis sale tax money might have to be returned back to taxpayers, according to articles in the Taxpayer Bill of Rights.¹¹⁶

The taxation structure for adult use of cannabis in Colorado is: the state collects tax revenue from cannabis sales through a 15 percent excise based tax on the average wholesale market rate; a 10 percent state tax on retail marijuana sales; a state sales tax of 2.9 percent, i.e. these taxes are added to each cannabis products.¹¹⁷ Each locality establishes its own sales tax as well. For example, in Denver, the local cannabis sale tax is 3.5 percent.¹¹⁸ Therefore, total tax rates will vary based on local sales taxes.

¹¹⁴ Eliza, Gray. "New Laws Chart Course for Marijuana Legalization." *The Time*, October 19, 2013. Accessed April 15, 2015. <http://nation.time.com/2013/10/19/new-laws-chart-course-for-marijuana-legalization/>.

¹¹⁵ Colorado also has the Marijuana Cash Fund, created in 2010, which was used for medical cannabis licensing revenue. Since July 2013, sales tax and revenue on medical was also deposited into the Marijuana Cash Fund. After creation of the Marijuana Tax Cash Fund, the Marijuana Tax Fund only receives cannabis licensing-related revenue to operate the Marijuana Enforcement Division in the Department of Revenue. (Source: <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1252029129668&ssbinary=true>)

¹¹⁶ "Colorado Constitution, Article 10, Taxpayer's Bill of Rights." Justice Law. December 1, 1992. Accessed April 15, 2015. <http://law.justia.com/constitution/colorado/cnart10.html>.

¹¹⁷ Joseph, Henchman. "Taxing Marijuana: The Washington and Colorado Experience." Tax Foundation. August 25, 2014. Accessed April 15, 2015. <http://taxfoundation.org/article/taxing-marijuana-washington-and-colorado-experience>.

¹¹⁸ Jeremy P., Mayer. "Denver Voters Backing 3.5 Percent Tax on Pot." *The Denver Post*, November 5, 2013. Accessed April 15, 2015. http://www.denverpost.com/breakingnews/ci_24461037/denver-voters-weigh-3-5-percent-marijuana-tax.

Twelve months of legal retail sales of cannabis for non-medical use have generated around 53 million dollars in tax revenues.¹¹⁹ Projections made in July 2014 for the upcoming fiscal year estimated that legalization of cannabis in Colorado would bring in more than 70 million dollars from July 2014 to June 2015. Currently it seems to be less. In an online article published by CNN Money, Colorado State University economist Phyllis Resnick said: “It’s definitely lower than expected.”¹²⁰ The primary reason was that experts overestimated the number of users who would stop buying cannabis on the black market.¹²¹

2.2 Similarities and Differences Between Regulatory Frameworks in Colorado and Washington

After the legalization initiatives were passed, representatives and state officials in Colorado and Washington spent a year drafting regulations for legal cannabis industries. The retail cannabis market in Washington State and Colorado State is subject to state supervision. Both states chose existing departments to regulate their cannabis programs. In Washington, the Washington State Liquor Control Board oversees retail cannabis business. The authority to regulate cannabis-related operation in Colorado is vested to the Marijuana Enforcement Division of the Department of Revenue.

For comparison it is useful that both Washington and Colorado passed their cannabis legalization initiative in November 2013 so it is possible to compare figures such as tax revenue allocation etc. The fundamental basis of the regulatory framework is broadly similar. But there are some significant differences related to taxation structure. The following passage addresses important similarities and differences between the two frameworks.

2.2.1 Similarities

Both popular initiative ballot measures removed state-laws prohibiting processing, producing and selling cannabis. The initiatives, *Amendment 64* in Colorado

¹¹⁹ "Colorado Marijuana Tax Data." Department of Revenue. Accessed April 15, 2015. <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

¹²⁰ "Recreational Pot Delivers \$53 Million in Tax Revenue to Colorado." CNN Money. February 12, 2015. Accessed April 15, 2015. <http://money.cnn.com/2015/02/12/news/economy/colorado-marijuana-tax-revenue/>.

¹²¹ Ibid.

and *Initiative 502* in Washington, outlined a state drug policy for cannabis and legalized cannabis possession for personal use by adults over the age 21.

Both states prohibit for example driving under influence policy, banning driving with whole-blood tetrahydrocannabinol (THC), the active psychoactive component of cannabis, with concentrations higher than 5 nanograms per milliliter.¹²² Additionally, Colorado law makes it illegal to have cannabis in the passenger area of a vehicle.¹²³ According to the cannabis legalization opposition Partnership for Drug-Free Kids, driving under the influence in Washington may be too high, since “driving under the influence of marijuana was associated with almost twice the risk of a motor vehicle crash when compared with unimpaired driving.”¹²⁴

Both Washington and Colorado require quality testing for all cannabis products, incl. edibles such as infused cookies, candies and cupcakes. However, mandatory potency testing began and was expanded during 2014. The Executive Director of the Colorado Department of Public Health and Environment, Dr. Larry Wolk explained that “the purpose of the new testing [in Colorado] is to give consumers more confidence that the product they are buying contains the amount of THC on the label.”¹²⁵

Since October 2014, when changes in Colorado’s cannabis industry took place, the industry structure is comparable in both states. The major change was that cannabis retail stores themselves did not have to grow what they sold.¹²⁶ Shops and growers were separated and vertical integration of cannabis related business effectively ended. Similarly to Washington, growers, processors and retailers must have state licenses, but

¹²² "Legalization of Marijuana and Impaired Driving." Colorado Department of Transportation. January 1, 2015. Accessed April 14, 2015. <https://www.codot.gov/safety/alcohol-and-impaired-driving/druggeddriving>.

¹²³ "Marijuana and Driving." Department of Transportation. Accessed April 14, 2015. <https://www.codot.gov/safety/alcohol-and-impaired-driving/druggeddriving/marijuana-and-driving>.

¹²⁴ "DUI Standard in New Washington Marijuana Law May Be Too High: Expert - Partnership for Drug-Free Kids." Partnership for Drug-Free Kids. Accessed April 14, 2015. <http://www.drugfree.org/join-together/dui-standard-in-new-washington-marijuana-law-may-be-too-high-expert/>.

¹²⁵ Jennifer, Kovaleski. "Colorado Expands Mandatory Potency Testing for Retail Marijuana Products at Newly-licensed Labs." *ABC7*, June 20, 2014. Accessed April 16, 2015. <http://www.thedenverchannel.com/news/local-news/marijuana/colorado-expands-mandatory-potency-testing-for-retail-marijuana-products-at-newly-licensed-labs>.

¹²⁶ John, Ingold. "Big Changes Set to Alter Colorado Recreational Marijuana Industry." *The Denver Post*. September 30, 2014. Accessed April 16, 2015. http://www.denverpost.com/news/ci_26637552/big-changes-set-alter-colorado-recreational-marijuana-industry.

no vertical integration is required. However, growers and processors cannot be retailers in Washington State.¹²⁷

Advertising is limited in both states. Washington forbids putting cannabis products on display to the general public. No licensed cannabis operator in the supply chain can advertise cannabis infused product in any form or through any medium whatsoever within 1,000 ft. of school grounds, playgrounds, childcare, public parks, libraries, or game arcades that allow minors to enter.¹²⁸ Also, advertising on public transit vehicles, in shelters or on any publicly owned or operated property is not allowed.¹²⁹ Publicly owned property includes every local, state and federal owned property. Colorado also prohibits any retailer “to engage in advertising that is visible to members of the public from any street, sidewalk, park, or other public place.”¹³⁰

2.2.2 Differences

In general, Colorado has implemented a more liberal policy towards retail cannabis. The state allows their citizens to produce small number of plants for their personal use – adults from 21 years of age can grow up to six cannabis plants at home, twelve plants per household. Washington made home production illegal, as all cannabis has to be grown by farmers with state licenses. Washington requires purchasing cannabis in licensed stores. Another factor that indicates a more liberal approach in Colorado is it legal to give cannabis to other users¹³¹

All non-medical cannabis in Washington must be purchased from a licensed retailer.¹³² This provision makes Washington state the only legal cannabis jurisdiction in

¹²⁷ Phillip A., Wallach, and Hudak John. "Legal Marijuana: Comparing Washington and Colorado." The Brookings Institution. July 8, 2014. Accessed April 16, 2015.

<http://www.brookings.edu/blogs/fixgov/posts/2014/07/08-washington-colorado-legal-marijuana-comparison-wallach-hudak>.

¹²⁸ "FAQs on I-502 | Washington State Liquor Control Board." FAQs on I-502 | Washington State Liquor Control Board. Accessed April 17, 2015. http://www.liq.wa.gov/marijuana/faqs_i-502.

¹²⁹ Ibid.

¹³⁰ "Colorado's Retail Marijuana Regulations Cover Advertising, Labeling and Packaging." Advertising, Marketing and Promotion. March 1, 2014. Accessed April 17, 2015. http://www.dglaw.com/images_user/newsalerts/Advertising_Colorado_Retail_Marijuana_Regulations.pdf.

¹³¹ The Colorado personal use law expressly allows a person 21 years of age or older to give up to one ounce of marijuana to another person 21 years of age or older. (Source: Colorado's constitution, Amendment 64)

¹³² "FAQs on I-502 | Washington State Liquor Control Board." FAQs on I-502 | Washington State Liquor Control Board. Accessed April 17, 2015. http://www.liq.wa.gov/marijuana/faqs_i-502.

the United States that prohibits small-scale home cultivation of cannabis for personal use. Washington limits total cannabis growing while Colorado has chosen not to impose any regulation and let the free market decide.¹³³

There are also significant differences regarding the taxation structure for retail cannabis. In general Washington imposes heavier taxes. According to a paper published by the Brookings Institution and Washington Office on Latin America, "Washington levies two or three 25 percent excise taxes within the supply chain, depending on industry structure, yielding a total tax burden likely somewhere between 30 and 40 percent, plus sales tax."¹³⁴

The distribution of resources also differs. The revenue is then allocated for "school construction, expanded education and prevention efforts, law enforcement."¹³⁵ According to John Walsh, a researcher at the Brookings Institution, taxes allocation is complicated in Washington. First, the tax revenue is used to fund administrative cost that are related to imposing cannabis regulation, to support various research projects and to prevention or substance abuse programs. Later the tax revenues are redistributed among cannabis-specific programs, i.e. Shick Shadel Hospital cannabis treatment program, general health care spending and the state's general fund.¹³⁶¹³⁷

¹³³ Trevor, Hughes. "Colo., Wash., Differ in Legalizing Marijuana." *USA Today*, July 7, 2014. Accessed April 18, 2015. <http://www.usatoday.com/story/news/nation/2014/07/07/marijuana-legal-recreational-colorado-washington/12286057/>.

¹³⁴ John, Walsh. "Q&A: Legal Marijuana in Colorado and Washington." The Brookings Institution. May 21, 2013. Accessed April 16, 2015. <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington>.

¹³⁵ John, Walsh. "Q&A: Legal Marijuana in Colorado and Washington." The Brookings Institution. May 21, 2013. Accessed April 16, 2015. <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington>.

¹³⁶ "Marijuana Treatment, Drug Rehab for Addiction, Seattle WA." Alcohol Treatment Drug Rehab for Addiction Schick Shadel Hospital Seattle Washington. Accessed April 16, 2015. <http://schickshadel.com/addiction-treatment-programs/marijuana-addiction-treatment/>.

¹³⁷ John, Walsh. "Q&A: Legal Marijuana in Colorado and Washington." The Brookings Institution. May 21, 2013. Accessed April 16, 2015. <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington>.

3. Policy design for cannabis legalization

As no US jurisdiction has previously removed the prohibition on cannabis. We do not know what regulations are the most effective with regard to health and security goals, i.e. consumption and criminal level decrease. Yet, whether cannabis legalization by various US States represents a positive or a negative for public safety and health depends on regulatory decisions and their implementation.¹³⁸ A balanced and effective regulatory system is essential for any successful transition from prohibition to cannabis legalization.

The states that have legalized cannabis confront the uneasy task to fulfill the law enforcement priorities set by the Cole memo. Also, they must balance between values that might contradict each other. For example by allowing production and sale of cannabis, more personal freedom is given to citizens, but greater health hazards might impact society due to addictive component of cannabis. According to the National Institute for Drug Abuse, federal government research institute, it is particularly harmful for minors to use cannabis, since various studies showed that early use of cannabis can have a negative effect on brain development.¹³⁹

Other jurisdictions that might legalize cannabis in 2016 will have to consider all provisions of their regulatory system.¹⁴⁰ Differences between regulatory frameworks in Colorado and Washington demonstrated that each jurisdiction is empowered to make its own regulatory design choices. However, before the debate over effective regulatory choices began, legislatures and policymakers should address fundamental aspects of the cannabis legalization. These aspects are developed and described in the eight Ps model invented by Beau Kilmer, co-director of the RAND Drug Policy Research Center.

¹³⁸ Kilmer. "The Eight Ps." 260.

¹³⁹ "DrugFacts: Marijuana." National Institute on Drug Abuse. April 1, 2015. Accessed April 20, 2015. <http://www.drugabuse.gov/publications/drugfacts/marijuana>.

¹⁴⁰ According to The Huffington Post in 2016 ballot initiatives that would legalize cannabis for non-medical use are expected in Nevada, Arizona, California, Massachusetts, Maine. (Source: The Huffington Post, http://www.huffingtonpost.com/2015/01/22/obama-marijuana-youtube_n_6527958.html)

3.1 The Eight Ps Policy Design

The eight Ps model defines important design choices that influence the final appearance of any regulatory system developed to control and influence supply and demand side of cannabis-related business operations. Eight categories that must be considered when developing regulatory framework are the following; 1) Production, 2) Profit motive, 3) Promotion, 4) Prevention, 5) Potency, 6) Purity, 7) Price and 8) Permanency.

The assessment of Colorado's design choices by using the eight Ps model helps to establish whether Colorado's regulation fully complies with the enforcement priorities described in the Cole memo. The model conceptualizes regulatory design choices and provides basic impact analysis. Described impacts are important for estimation whether or not Colorado regulations undermines the enforcement priorities. The first category discusses production and distribution of cannabis. Prohibition is a decisive factor that influences the price of the final product, because of the risk "dealers and others along the supply chain" take.¹⁴¹ If cannabis is illegal, the price of the product is inflated because of "structural consequences of product's illegality" meaning that those on the supply side have to operate covertly and as a result inefficiencies are created.¹⁴²

According to the eight Ps model, with cannabis legalization, a drop in price will be inevitable. The production cost will depend on following factors: 1) place where the production takes place i.e. outdoors or indoors,¹⁴³ 2) number of producers on the market, 3) types of products allowed, i.e. edibles containing THC etc. 4) licensing regime, i.e. whether vertical integration of supply chain is allowed or not. One estimation is that harvesting legal crops would decrease the price to 20-35 USD per

¹⁴¹ Beau, Kilmer. "Policy Designs for Cannabis Legalization: Starting with the Eight Ps." *The American Journal of Drug and Alcohol Abuse* 40, no. 4 (2014): 259-61.

¹⁴² Johnathan P., Caulkins, Angela Hawken, Beau Kilmer, and Mark Kleiman. *Marijuana Legalization: What Everyone Needs to Know*. New York: Oxford University Press, 2012. 38.

¹⁴³ If outdoor production is not allowed the drop in price would be lower, but still substantial. (Source: The eight P's model)

pound.¹⁴⁴ Setting the proper price for cannabis products is crucial in order to prevent a significant increase in consumption.¹⁴⁵

The second category, the profit motive, discusses the intention of cannabis corporations to maximize profit. Corporations have a strong incentive to have as many dependent users. Kilmer estimated that “about 80% of the cannabis market is driven by the roughly 20% of past year users who use on a daily or near daily basis.”¹⁴⁶ There are multiple ways to prevent an increase of heavy users. For example, authorities in Colorado can impose further restrictions on advertising or permit state monopolies. Even though in the United States a monopoly on some market segments, such as lottery, exists, “this option has not gained traction in US cannabis debate since states cannot order their employees to violate federal law”.¹⁴⁷

The third category, promotion, states that cannabis operators “may attempt to create and keep heavy users through marketing and advertising.”¹⁴⁸ Heavy use of cannabis would have direct implications, i.e. higher amount of resources on treatment and re-socialization, as well as indirect implications on productivity during work process.¹⁴⁹ Therefore, policy designs that will restrict marketing and advertising to prevent heavy use of cannabis are needed.

The fourth category concerns the issue of prevention that among other things includes limiting access or exposure to cannabis.¹⁵⁰ Experience with regulation of gambling in other countries suggests that limiting the number of retail stores, opening hours and days of operation lessen the number of addicts.¹⁵¹ Another aspect to consider is “how cannabis prevention messages should be framed and presented when those 21

¹⁴⁴ Jonah P. Caulkins. *Estimated Cost of Production for Legalized Cannabis*. Santa Monica: RAND Drug Policy Research Centre, 2010. 19-20.

¹⁴⁵ Beau Kilmer. "Insights on the Effects of Marijuana Legalization on Prices and Consumption." *Insights on the Effects of Marijuana Legalization on Prices and Consumption*. September 1, 2010. Accessed April 22, 2015. <http://www.rand.org/pubs/testimonies/CT351.html>.

¹⁴⁶ Kilmer, *The Eight P's*, 259.

¹⁴⁷ *Ibid.*, 260.

¹⁴⁸ Kilmer, *The Eight P's*, 260.

¹⁴⁹ David G. Evans. "The Economics Impact of Marijuana Legalization." *The Journal of Global Drug Policy and Practice* 7, no. 4 (2013): 11. <http://www.globaldrugpolicy.org/Issues/Vol 7 Issue 4/The Economic Impacts of Marijuana Legalization final for journal.pdf>.

¹⁵⁰ Kilmer, *The Eight P's*, 260.

¹⁵¹ Viktor, Mravčík, et al. *Dopady Hazardního Hraní v České Republice*. Praha: Úřad Vlády České Republiky, 2014.

and older are allowed to consume the drug.”¹⁵² Last but not least, the cannabis tax revenues in Colorado, according to the eight Ps model.¹⁵³

Fifth category, potency, poses a question for jurisdictions seeking to legalize cannabis whether a limit on THC should be imposed.¹⁵⁴ Cannabis has changed since the 1970s, according to World Drug Report 2009, due to “new methods of productions such as hydroponic cultivation [a method of growing plants using mineral nutrient solutions, in water, without soil] have increased the potency and the negative effects of THC.”¹⁵⁵ Scientists from the National Institute on Drug Abuse reviewed the implications of rising cannabis potency and noted that because “older studies are based on the effects of lower-potency (less THC) marijuana, stronger adverse health effects may occur with today’s more potent marijuana.”¹⁵⁶ Hence, imposing limits on maximum THC in all cannabis products is desirable.

It is important to consider cannabis potency because of its link to health problems including mental health.¹⁵⁷ According to Beau Kilmer, potency of cannabis imported from Mexico into the United States is estimated between 4-8% THC. Findings presented at the 249th American Chemical Society National Meeting and Exposition found that Colorado cannabis reached the average THC level of 18.7 percent while some retail pot contains 30 percent THC or more.¹⁵⁸ However, putting a limit on THC might create a black market for more potent cannabis products. The eight Ps model therefore suggests it is necessary to “impose a maximum THC concentration, a minimum CBD¹⁵⁹ concentration, or a THC:CDB ratio below a certain threshold.”¹⁶⁰

¹⁵² Kilmer, The eight P’s, 260.

¹⁵³ Ibid., 260.

¹⁵⁴ The main component in cannabis responsible for its psychoactive effects is a cannabinoid called delta-9-tetrahydrocannabinol, or THC in short. According to University of Washington Alcohol and Drug Abuse Institute, in combination with other cannabinoids, the percentage of THC in cannabis determines the strength of the effect of cannabis. (Source: "Learn About Marijuana: Factsheets: Cannabinoids." University of Washington. June 1, 2013. Accessed April 25, 2015. <http://learnaboutmarijuanawa.org/factsheets/cannabinoids.htm> htm)

¹⁵⁵ *World Drug Report 2009*. New York: United Nations, 2009. 97-98.

¹⁵⁶ Nora D., Volkow, Baler D. Ruben, Compton M. Wilson, and Weiss R.B. Susan. "Adverse Effects of Marijuana Use." *The New England Journal of Medicine* 23, no. 370 (2014): 2219. Accessed April 25, 2015.

¹⁵⁷ *World Drug Report 2009*. New York: United Nations, 2009. 97.

¹⁵⁸ Bill, Briggs. "Colorado Marijuana Study Finds Legal Weed Contains Potent THC Levels." *NBC News*, March 23, 2015. Accessed April 25, 2015. <http://www.nbcnews.com/storyline/legal-pot/legal-weed-surprisingly-strong-dirty-tests-find-n327811>.

¹⁵⁹ „CBD is probably the most abundant cannabinoid, contributing up to 40% of cannabis resin.

This provision is missing in Colorado regulation. Without limits on THC the potency of cannabis can be higher than before.¹⁶¹

The sixth category, purity, asks whether to regulate the purity of cannabis product, and if so, what the limits should be. If a jurisdiction chooses to regulate purity of the product, it will also have to decide how the limitations are going to be controlled, and how the users are going to be informed about the purity of cannabis. Purity, i.e. an absence of contaminants in the products, has impact on overall quality of the products. Regulators, according to the eight Ps model, will have to also consider whether cannabis products will be allowed to be infused with alcohol or nicotine.¹⁶²

The seventh category, price, is particularly important because the retail price of cannabis will partially determine consumption levels. Users and potential users are sensitive to the price of cannabis products and a “10% decline in price is likely to lead to approximately a 3% increase in cannabis participation.”¹⁶³ Policy makers can influence the price of products through tax rates. Also, the price can be influenced by limiting the number and size of production capacities. In addition to an impact on consumption, the pricing requirements will have an impact on the size of black market, since high taxation is likely to draw users to illegal dealers. How the taxes are levied is important as well. “Setting the tax as a function of the total weight e.g. 50 USD per ounce may not be ideal since it creates incentives to produce and purchase more potent cannabis.”¹⁶⁴ Minimizing adverse effect of cannabis on health seems to impose taxes based on the value of the cannabis. Accordingly, taxes could be based on THC:CBD ratio or THC potency.¹⁶⁵

The eight category is titled permanency urges jurisdiction to build flexibility in the regulatory system. Flexibility can be ensured by incorporating provision that

Interestingly, CBD may actually have anti-anxiety effects and lessen the psychoactive effects of THC. This means that a plant with a greater percentage of CBD may reduce the intensity of the effects of the THC, which in effect lowers the potency of the plant.“ (Source: "Learn About Marijuana: Factsheets: Cannabinoids." University of Washington. June 1, 2013. Accessed April 25, 2015. <http://learnaboutmarijuanawa.org/factsheets/cannabinoids.htm>.)

¹⁶⁰ Kilmer, The eight P's model, 260.

¹⁶¹ Bill, Briggs. "Colorado Marijuana Study Finds Legal Weed Contains Potent THC Levels." *NBC News*, March 23, 2015. Accessed April 25, 2015. <http://www.nbcnews.com/storyline/legal-pot/legal-weed-surprisingly-strong-dirty-tests-find-n327811>.

¹⁶² Kilmer, The eight Ps model., 260.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

includes an escape clause if needed, i.e., if after a certain period of time the voters or legislators decide not to continue the policy.¹⁶⁶ This will decrease the negative outcomes of cannabis legalization, since jurisdictions will be able to react to research and experience.

3.1.1 Limits of the Eighth Ps Model

The eight Ps model is academic tool that was not considered when the enforcement priorities were formulated in the Cole memo. Hence, not all categories in the model fall within the enforcement priorities. Still due to the eight Ps model it is possible to assess the impact of key regulatory design choices. For instance, the model predicted that taxation will have impact on cannabis consumption. Higher use can indirectly undermine the enforcement priorities, namely preventing distribution of cannabis to minors.

The policy designs in the eight Ps model were published before any legalization of cannabis. A few months after the first cannabis retail store opened in Colorado, there is a better understanding of the difficulties to get cannabis legalization right on the first or second attempt. The design choices formulated by Beau Kilmer are still relevant, but an update based on recent developments is needed in order to provide jurisdictions that are considering cannabis legalization with more recent and comprehensive information regarding the regulatory design choices.

The ongoing lawsuit of Nebraska and Oklahoma against Colorado proved that more design choices are important and should be considered. The plaintiff states were displeased with cross border smuggling of cannabis from Colorado. Home cultivation is legal in Colorado. This might have impact on cross border smuggling. Home cultivation increases accessibility of cannabis. Easily accessible products are more likely to be consumed and potentially smuggled out of the state.

Hence, home cultivation should be added to the eight Ps model. Each jurisdiction considering legalizing cannabis should decide whether or not to allow home cultivation.¹⁶⁷ Home cultivation can take the market share away from corporations

¹⁶⁶ Ibid., 260.

¹⁶⁷ Jonathan, P. Caulkins, Beau Kilmer, Robert J. MacCoun, Rosalie L. Pacula, and Peter Reuter. "Design Considerations for Legalizing Cannabis: Lessons Inspired by Analysis of California's

whose interest is to maximize profit. However, home cultivation may have negative impact on cross border smuggling and consumption rates. Growing cannabis at home may indirectly affect upholding the enforcement priorities, namely preventing distribution of cannabis to minors and preventing the diversion of marijuana from states where it is legal under state law in some form to other states. Home cultivation contributes to already high availability of cannabis in Colorado.¹⁶⁸ If the drug is easily available, it is more likely that minors are going to be exposed to it. Also, highly available cannabis products may be smuggled out of the state in higher quantities and someone caught in possession of cannabis for sale could claim that it had been grown legally at home for personal use¹⁶⁹

3.2 What Design Choices Colorado Chose to Implement

More than one year since the citizens in Colorado chose to create legal cannabis market it is possible to evaluate the design choices this state made. Detailed focus is devoted to Colorado because - as mentioned in the second chapter of this thesis, regulators decided to implement a more liberal regulatory framework, i.e. if possible favoring freedom of action than strict regulations, that provides citizens with more personal freedoms, but might create higher health and social risk associated with cannabis legalization.

Later in this subchapter, policy design choices, assessed on the basis of the eight Ps model, are analyzed with respect to the law enforcement requirements that are included in the Cole memorandum. The less robust cannabis regulatory framework in Colorado might pose higher danger for the state as the implemented regulatory framework will not meet the law enforcement priorities. Failure to meet the law enforcement priorities could provoke the federal government to interfere and prosecute cannabis related activities in the state in compliance with CSA.

Proposition 19." *Addiction*, 105, no. 5 (2011): 869.

¹⁶⁸ National Drug Threat Assessment Summary 2013. Washington D.C.: Drug Enforcement Administration, 2013, 1.

¹⁶⁹ Caulkins, et. al, *Design consideration of legalizing cannabis*, 869.

3.2.1 Colorado Policy Design Choices According to the Eight Ps Model

In the subsequent subchapter, eight design choices defined in the eight Ps model are used in order to specifically define what basic framework of regulation was implemented in Colorado. To the existing eight categories, one more category is added. This added category deals with a more recent problem of cannabis being smuggled to neighboring states. The category is hereafter titled *home cultivation*.¹⁷⁰

Design choice	Colorado regulatory framework
Production	i) place where production takes place - Only in the Marijuana Enforcement Division licensed and certified manufacture and retail facility. ¹⁷¹ - Cannabis must be grown in a fully enclosed and locked space that cannot be seen openly, i.e. greenhouses. ^{172 173} ii) number of producers on the market - As of April 7, 2015 there are 357 licensed retail stores. ¹⁷⁴ - There is no limit on the total amount of producers. However, all applicants for a license must prove at least two years of residency in Colorado prior to applying for a license. Additionally, they have to pass criminal and credit background checks. ¹⁷⁵ - Each county can implement more restrictive rules and even prohibit cannabis cultivation and sale in their district. iii) types of products allowed Concentrates, Topicals, and Edible Products are allowed. ¹⁷⁶ iv) licensing regime In Colorado, vertical integration across production and sale (i.e., a single entity producing and selling) is allowed. ¹⁷⁷

¹⁷⁰ Ibid. 869.

¹⁷¹ "Laws: Constitution, Statutes and Regulations - Marijuana Enforcement." Colorado Department of Revenue. Accessed April 26, 2015. <https://www.colorado.gov/pacific/enforcement/laws-constitution-statutes-and-regulations-marijuana-enforcement>.

¹⁷² Enclosed "means a permanent or semi-permanent area covered and surrounded on all sides. Temporary opening of windows or doors or the temporary removal of wall or ceiling panels does not convert the area into an unenclosed space." To grow marijuana outside, it must be enclosed above and on the sides of the plants, i.e. greenhouse, in addition to being locked away from the public. (Source: Colorado General Assembly House Bill 14-1122, passed in March 2014)

¹⁷³ "Home Growers - Colorado Marijuana." State of Colorado. Accessed April 26, 2015. <https://sites.google.com/a/state.co.us/marijuana/knowthelaws/homegrowers>.

¹⁷⁴ "MED Licensed Facilities." Marijuana Enforcement Division. April 7, 2015. Accessed April 26, 2015. <https://www.colorado.gov/pacific/enforcement/med-licensed-facilities>.

¹⁷⁵ Ibid.

¹⁷⁶ Miles K., Light, Adam Orens, Brian Lewandowski, and Todd Pickton. Market Size and Demand for Marijuana in Colorado. Denver, Colorado: Colorado Department of Revenue, 2015. 28.

¹⁷⁷ "Q&A: Legal Marijuana in Colorado and Washington." The Brookings Institution. May 21, 2013. Accessed April 26, 2015. <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington>.

Profit motive	The largest cannabis retail store operator is Terrapin Care Station with 13 retail stores out of 357. ¹⁷⁸ Colorado residents of 21 years and older can acquire no more than 1 ounce of retail cannabis at a time. Non-residents can purchase 1/4 ounce. ¹⁷⁹
Promotion	- The regulation prohibits any seller to engage in advertising that is visible to the public from a sidewalk, park, street, or other public place (except to identify the location of cannabis establishment, i.e. manufacture facility, or retail store). ¹⁸⁰ -In addition, a cannabis business owners cannot include in any form of advertising or signage that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images. ¹⁸¹
Prevention	- Colorado does not allow Amsterdam style coffee shops, and it is illegal to consume cannabis in areas, such as rental cars, hotels, and public spaces. ¹⁸² - There will be more explicit warnings and thorough information on labels, including warning statements such as “This product is unlawful outside the State of Colorado” and “The intoxicating effects of this product may be delayed by two or more hours.” ¹⁸³
Potency	- Since May 1, 2014, every retail cannabis product manufacturer is required to submit sample from each production batch to a licensed cannabis testing facility. The individually packaged product must be tested in order to ensure that it does not contain more than 100mg of active THC. -The Marijuana Enforcement Division is providing incentives for companies to produce 10 milligram products by putting greater burdens on manufacturers of products between 10 and 100 milligrams. ¹⁸⁴

¹⁷⁸ "MED Licensed Facilities." Marijuana Enforcement Division. April 7, 2015. Accessed April 26, 2015. <https://www.colorado.gov/pacific/enforcement/med-licensed-facilities>.

¹⁷⁹ "Home Growers - Colorado Marijuana." State of Colorado. Accessed April 26, 2015. <https://sites.google.com/a/state.co.us/marijuana/knowthelaws/homegrowers>.

¹⁸⁰ "Colorado's Retail Marijuana Regulations Cover Advertising, Labeling and Packaging." Advertising, Marketing and Promotion. March 1, 2014. Accessed April 17, 2015. http://www.dglaw.com/images_user/newsalerts/Advertising_Colorado_Retail_Marijuana_Regulation_s.pdf.

¹⁸¹ "Colorado's Retail Marijuana Regulations Cover Advertising, Labeling and Packaging." Advertising, Marketing and Promotion. March 1, 2014. Accessed April 17, 2015. http://www.dglaw.com/images_user/newsalerts/Advertising_Colorado_Retail_Marijuana_Regulation_s.pdf.

¹⁸² Ibid.

¹⁸³ Ricardo, Baca. "New Rules in Effect for Colorado Marijuana Edibles Feb. 1." The Cannabis. January 29, 2015. Accessed April 26, 2015. <http://www.thecannabist.co/2015/01/29/colorado-marijuana-edibles-fire-sale-regulations-feb-1/28775/>.

¹⁸⁴ Ricardo, Baca. "New Rules in Effect for Colorado Marijuana Edibles Feb. 1." The Cannabis. January 29, 2015. Accessed April 26, 2015. <http://www.thecannabist.co/2015/01/29/colorado->

Purity	-Colorado allowed liquid edible retail cannabis products as well as other edible products such as cannabis infused chocolate, candy etc. ¹⁸⁵
Price	Colorado has enacted a 15 percent excise tax on unprocessed product and a 10 percent sales tax. The precise effective tax rates will vary based on the price of unprocessed cannabis relative to the total retail price, and with varying local sales taxes.
Permanency	-In accordance with direction and mandates provided via the Colorado Revised Statutes ¹⁸⁶ , the Division promulgates regulations under which Colorado's Medical and Retail Marijuana industries are expected to operate. ¹⁸⁷
Home cultivation	Colorado residents of 21 years and older can grow as many as 6 cannabis plants per person. Only 3 plants can be mature at any one time. Marijuana plants must be kept in an enclosed, locked area. ¹⁸⁸

3.2.2 Are Colorado design choices in accordance with the law enforcement priorities?

In the following sub-chapter, eight law enforcement priorities formulated by the Department of Justice in the so-called Cole memorandum are confronted with the policy design choices that framed cannabis regulation in Colorado. Insufficiencies in Colorado cannabis regulation were identified. Additionally, suggestions how to prevent failure to meet the law enforcement priorities are provided in this section.

Even though it is required that every production batch is registered in the Marijuana Inventory Tracking System that is operated by MED, further collection of data and supervision is needed.¹⁸⁹ According to the publication *Market Size and*

marijuana-edibles-fire-sale-regulations-feb-1/28775/.

¹⁸⁵ *Emergency Rules R1004.5 and R106.5 01302015*. Denver, Colorado: Colorado State, 2015.

¹⁸⁶ “The Colorado General Assembly provides the Marijuana Enforcement Division with the authority to carry out its mission through the passage of legislation, which make up the Colorado Revised Statutes (C.R.S.) The Medical Marijuana Code is comprised of C.R.S. 12-43.3-101 et. seq. and the Retail Marijuana Code is comprised of C.R.S. 12-43.4-101 et. Seq.” (Source: Laws: Constitution, Statutes and Regulations - Marijuana Enforcement)

¹⁸⁷ "Laws: Constitution, Statutes and Regulations - Marijuana Enforcement." Laws: Constitution, Statutes and Regulations. Accessed April 27, 2015. <https://www.colorado.gov/pacific/enforcement/laws-constitution-statutes-and-regulations-marijuana-enforcement>.

¹⁸⁸ "Q&A: Legal Marijuana in Colorado and Washington." The Brookings Institution. May 21, 2013. Accessed April 26, 2015. <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington>.

¹⁸⁹ "Metrc." Metrc. January 1, 2014. Accessed April 27, 2015. <http://www.metrc.com/#!/support->

Demand for Marijuana in Colorado that was prepared for Colorado Department of Revenue, the lack of market data is an overarching challenge.¹⁹⁰ Particularly disturbing is the absence of any “credible data source to derive factors that convert dried flower weight to concentrate, topical, and edible weight.”¹⁹¹ This means that part of the market with cannabis products, i.e. edibles, is not sufficiently tracked by the Marijuana Inventory Tracking System.

Cannabis edibles represent 45 percent of Colorado’s legal cannabis market. One cannabis infused candy or cookie can contain 10 times the recommended amount of 10 milligrams of THC.¹⁹² The lawmakers in Colorado started to work on regulation of cannabis edibles in March 2014; three months after the legalization went into effect. In 2014, lack of edibles regulation led to doubling the emergency visits by children that accidentally ate products containing cannabis.¹⁹³ Since July 2014, cannabis edibles manufacturers have to comply with tougher and therefore more appropriate rules on packaging, serving size and potency.¹⁹⁴ The development in first half of 2014 could undermine the law enforcement priority, namely preventing distribution of cannabis to minors, by failure to implement a strong regulatory framework that would consider cannabis edibles.

A negative for controlling consumption might be that cannabis establishment can sponsor charitable, sports, or similar events in Colorado. According to *Davis & Gilbert*, Attorneys at Law and reports from *Reuters*, cannabis establishment can advertise on television and radio, over the Internet, or in print publications, if they can establish that at least 70 percent of the audience is over the age of 21.¹⁹⁵ The controversy with this

tools/c2gj.

¹⁹⁰ Miles K., Light, Adam Orens, Brian Lewandowski, and Todd Pickton. *Market Size and Demand for Marijuana in Colorado*. Denver, Colorado: Colorado Department of Revenue, 2015. 28.

¹⁹¹ *Ibid.*, 28.

¹⁹² Jordan, Steffen. "Appetite for Edibles in Colorado Big Surprise for Recreational Market." *The Cannabist*. December 26, 2014. Accessed April 27, 2015.
<http://www.thecannabist.co/2014/12/26/marijuana-edibles-colorado-recreational-sales/26100/>.

¹⁹³ John, Ingold. "Children's Hospital Sees Surge in Kids Accidentally Eating Marijuana." *The Denver Post*, May 21, 2014.

¹⁹⁴ http://www.denverpost.com/news/ci_26254614/colorado-marijuana-edibles-manufacturers-face-tougher-rules

¹⁹⁵ "Advertising, Marketing & Promotions." *Davis & Gilbert LLP - Attorneys*. March 1, 2014. Accessed April 28, 2015.
http://www.dglaw.com/images_user/newsalerts/Advertising_Colorado_Retail_Marijuana_Regulations.pdf.

kind of advertisement is that even though cannabis establishment can prove that there is less than 30 percent of audience under the age of 21, still it is likely that children and young adults might be exposed to this advertisement.. To make things worse, until February 2014, the advertising regulation did not even apply to Colorado's medical cannabis establishments.¹⁹⁶

Despite the fact that cannabis establishment in Colorado sued the state over regulations that limit them from advertising their products, Colorado should enforce even stricter limits on the cannabis industry, including the medical cannabis industry, on advertising their products. Failure to do so could be considered as violation of the law enforcement priorities, i.e., the exacerbation of other adverse public health consequences associated with cannabis use, and preventing distribution of cannabis to minors.¹⁹⁷ Latter law enforcement priority could be violated, if we accept that consumption among minors could be influenced to use cannabis after being exposed to such a advertisement.

Another significant concern is potency of cannabis products. As mentioned, legal cannabis products in Colorado are nearly twice as potent as illegal cannabis products of past decades.¹⁹⁸ Colorado should enforce regulations that would put limit on total amount of THC in all cannabis products. It is desirable to place a limits on minimum CBD in the product. CBD is considered to have a wider range of positive medical applications.¹⁹⁹

Colorado should enforce regulations that would decrease cross border smuggling of cannabis. A measure to implement is prohibition of cannabis sale near the state border. Visitors from neighboring states are more likely to drive to near by cannabis establishments. In Colorado, any adult over the age of 21 can to purchase cannabis.²⁰⁰ This might undermine prohibition in the neighboring states. Cannabis free zone near

¹⁹⁶ Keith, Coffman. "Limits on Marijuana Advertising Land Colorado in Court." *Reuters*, February 12, 2014. Accessed April 28, 2015. <http://www.reuters.com/article/2014/02/13/us-usa-colorado-marijuana-idUSBREA1C01E20140213>.

¹⁹⁷ Cole memo.

¹⁹⁸ Bill, Briggs. "Colorado Marijuana Study Finds Legal Weed Contains Potent THC Levels." <i>NBC News</i>, March 23, 2015. Accessed April 25, 2015. <http://www.nbcnews.com/storyline/legal-pot/legal-weed-surprisingly-strong-dirty-tests-find-n327811>.

¹⁹⁹ Campos, A. C., F. A. Moreira, F. V. Gomes, E. A. Del Bel, and F. S. Guimaraes. "Multiple Mechanisms Involved in the Large-spectrum Therapeutic Potential of Cannabidiol in Psychiatric Disorders." *Philosophical Transactions of the Royal Society B: Biological Sciences*, 2012, 3364-378.

²⁰⁰ "An Out-of-State Visitors Guide to Marijuana in Colorado." Law Office of Steven Rodemer, LLC. March 2, 2014. Accessed May, 14, 2015. <http://www.coloradospringscriminaldefense.net/state-visitors-guide-marijuana-colorado/>.

border might prevent some visitors from driving to Colorado to purchase cannabis. In addition, more intense border control might also decrease cannabis smuggling to neighboring states.

Conclusion

The Rising acceptance of cannabis among the public has created pressure on US jurisdictions to accept cannabis legalization. After the failure of California Proposition 19, legalization advocates across the United States could celebrate the passage of popular ballot initiative that legalized cannabis in Colorado State. Similar public ballot initiatives were successful in Washington, Oregon, Alaska and Washington D.C.

In the United States, there is a different approach towards cannabis control on federal and state level. At the federal level, cannabis *per se* has been made illegal and criminal according to the CSA. If the federal government decides to enforce CSA and prosecutes cannabis-related activities, cannabis legalization on state level would not be sustainable. However, so far, the federal government did not undo cannabis legalization on state level. Most likely, the federal government's limited prosecutorial resources played a role in the Obama administration's decision to hold off from enforcing the CSA provision related to cannabis law enforcement.

The federal government position towards cannabis legalization was criticized by the UN agencies such as the INCB and the UNODC. These agencies were accusing the United States for the UN International Drug Control Conventions violations. The conventions require all signatories to devote a concerted effort to suppress illicit drug activity as much as possible. The federal government maintains that the conventions allow some flexibility in order to increase effectiveness. Also, representatives of the State Department during talks with the INCB referred to the treaties' recognition of parties' constitutional limitations, i.e. acknowledgment that signatories' Constitutions are superior to treaty provisions. In this regard, federalism is a limitation and often prevents the United States' federal government from challenging individual states to enforce federal law or to enact particular policies.

The federal government opposed cannabis legalization on state level via a White House statement.²⁰¹ In contrast with this opposition, Deputy Attorney General James M. Cole issued a guidance regarding cannabis law enforcement.

²⁰¹ "Marijuana." The White House. Accessed May 13, 2015.
<https://www.whitehouse.gov/ondcp/marijuana>.

This guidance, also known as the Cole memo, instructed the US attorneys in exercising prosecutorial discretion vis-a-vis cannabis-related activities. In his enforcement policy memo, Cole detailed what were the priorities of the federal government and stated that CSA remained effective. The Cole memo in fact forced the states that legalized cannabis to implement a regulatory framework which would mitigate the clash between the federal and state law, i.e. to uphold the federal law that criminalizes cannabis and uphold right of states to legislate in areas that belong to states. Without strong regulatory framework necessary to fulfil the law enforcement priorities, the federal government might undo cannabis legalization by enforcing CSA by prosecuting individuals whose conduct violates the federal US drug policy.

The thesis analyzes whether the Colorado state's policy design is in line with the law enforcement priorities, i.e. Cole memo. In order to answer this question, the eight Ps model of policy design is used. The model primarily focuses on the policy considerations confronting states that are perusing a change in cannabis policy. The model was updated to include information regarding policy design impact where available. This updated model was then used to identify possible clashes between Colorado's regulatory measures and the federal law enforcement priorities. The regulatory measures were separated into eight categories according to the eight Ps model. These categories represent the key policy choices that each jurisdiction must answer before cannabis is legalized. One category, titled Home cultivation, was added to the model based on current development, e.g. the lawsuit of Nebraska and Oklahoma against Colorado, in which the plaintiff states complain about cross-border cannabis smuggling. The author believes that home cultivation correlates with availability of cannabis: Higher availability might have negative impact on cross border smuggling.

After applying the updated eight Ps model, we can conclude that the current regulatory measures in Colorado did not directly undermine the law enforcement priorities. Nevertheless, a few weak spots were identified in Colorado's cannabis regulation. These weak spots are the following:

- 1) Cannabis edibles are highly potent and their regulation was not in place when cannabis legalization went into effect. This lack of regulation might undermine the law enforcement priority, namely preventing distribution of cannabis to minors;
- 2) Advertisement on cannabis products is allowed and audience under 21 years can be exposed to it. This might undermine the law enforcement priorities, namely a) preventing the exacerbation of other adverse public health consequences associated with cannabis use, and b) preventing distribution of cannabis to minors;
- 3) Legal cannabis products in Colorado are nearly twice as potent as illegal cannabis products of past decades. This might undermine the law enforcement priority associated with exacerbation of other adverse public health consequences, i.e. cannabis dependency;
- 4) home cultivation allowance: high availability influenced by home cultivation may have an impact on cross border smuggling. This regulatory measure might undermine the law enforcement priority, namely preventing the diversion of marijuana from states where it is legal under state law to other states.

Colorado regulatory agency, MED, should enforce stronger regulations with regard identified weak points. Further, MED should focus on controversial issues that are not required by the law enforcement priorities, but might negatively impact public health. Colorado's regulators should consider the following recommendations:

- 1) Ensure that reliable market data are available. The lack of market data is an overarching challenge in Colorado. Without extensive data collection, it is hard to design regulations informed by established objective evidence.
- 2) Restrict ability of cannabis operators to sponsor charity and sport events. Cannabis operators, by associating themselves with popular sports team or renowned foundation, may target new consumers that would otherwise not consider to use cannabis. Sponsoring any sport or charity events could draw attention from the fact that consumption of cannabis has negative health consequences.

If those recommendations are not met, cannabis use in Colorado might increase.

The use, possession, sale, transportation and cultivation of cannabis remains prohibited by overwhelming majority of US states and nations in the world. Global trend is that cannabis remains an illegal drug and political leaderships do not favor legalizing cannabis in the near future. To change this approach towards cannabis control might take many years or even decades or it might not happen at all, if the scientific community cannot provide reliable data about potential positive impact of cannabis legalization. The nationwide ban on cannabis-related activities is unlikely to end in the near future. Yet, there is one historical parallel when prohibition on alcoholic beverages was removed in 1933. Hence, there is a precedent that cannabis legal status might be reconsidered, if positive results outweigh the negatives and political leadership decides that such a change is desirable.

Despite the weak points in Colorado's regulation, citizens, legislators, policymakers and regulators should closely watch implementation of cannabis regulation in states like Colorado. Recent visits of legislators and scholars from Uruguay, Brazil, Mexico, Chile, Canada and the United Kingdom in Colorado demonstrate that the state is in the center of the debate about cannabis legalization. Legalization of cannabis by various US jurisdictions might influence the legalization debate in the Czech Republic. Advocacy groups such as Legalizace.cz try to persuade the country's political leadership to legalize cannabis for many years with little success. Possible positive outcomes of legalization in the United States and best practices from cannabis regulation might benefit the legalization debate in Czech Republic and elsewhere.

Shrnutí

První část této práce se zaměřuje na problematiku legality konopí, kdy na federální úrovni je výroba a držení a užívání konopí zakázána, a naopak na úrovni některých států USA je konopí pro nelékařské použití legalizováno.

Federální vláda byla nucena po unilaterálním rozhodnutí Colorada a Washingtonu přijmout stanovisko, které by adresovalo tento problém. Jako odpověď federální vlády bylo vydáno tzv. Coleovo memorandum, které stanovuje priority federální vlády ve vztahu k vymáhání práva u konopných deliktů. Federální vláda se tedy tímto memorandumem rozhodla neinterventovat, pokud nedojde k porušení stanovených priorit.

Spojené státy jako signatář některých úmluv OSN o kontrole narkotik porušily své mezinárodní závazky, a tím vyvolaly nevoli Mezinárodní rady pro kontrolu narkotik (INCB). První práce se tedy věnuje jak národnímu, tak mezinárodnímu aspektu legalizace konopí pro nelékařské účely některými státy USA.

Ve druhé části se práce zabývá regulací užívání a obchodu s konopím a konopnými produkty. Na příkladu Colorada je ilustrována nutnost implementovat silná regulační opatření pro kontrolu nakládání s konopím. Tato potřeba silných regulačních opatření je dána také názorem federální vlády, který explicitně doporučuje přijmout takovou regulaci, která by zamezila porušení zmíněných priorit. Colorado lze považovat za stát, který v porovnání s ostatními státy přijal méně restriktivní opatření pro regulaci konopí. V případě menší restrikce je vyšší pravděpodobnost, že dojde k porušení některých federálních priorit. V závěru došlo ke konfrontaci regulačních opatření v Coloradu s federálními prioritám, aby bylo možné posoudit, zda Colorado tyto priority naplňuje, a jak efektivně. I přes to, že se nepotvrdilo přímé porušení povinností daných Colovými memorandumem, byla identifikována některá úskalí regulace konopí v Coloradu.

K posouzení, zda Colorado naplňuje literu federálních priorit, byl využit model pro kategorizaci výběru politik ve vztahu k legalizaci konopí. Tento model byl doplněn o některé údaje vztahující se k hodnocení možných dopadů regulace konopí. Například v oblasti zdanění konopí a konopných produktů byla zmíněna souvislost mezi cenou produktu a celkovou mírou užívání. Vyšší míra užívání daná nízkou cenou by mohla nepřímo ovlivnit federální prioritu, která se týká nutnosti zamezit užívání konopí

osobami mladšími 21 let. Snáze dostupné konopí by mohlo vyvolat zvýšení v míře užívání u této věkové kategorie.

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