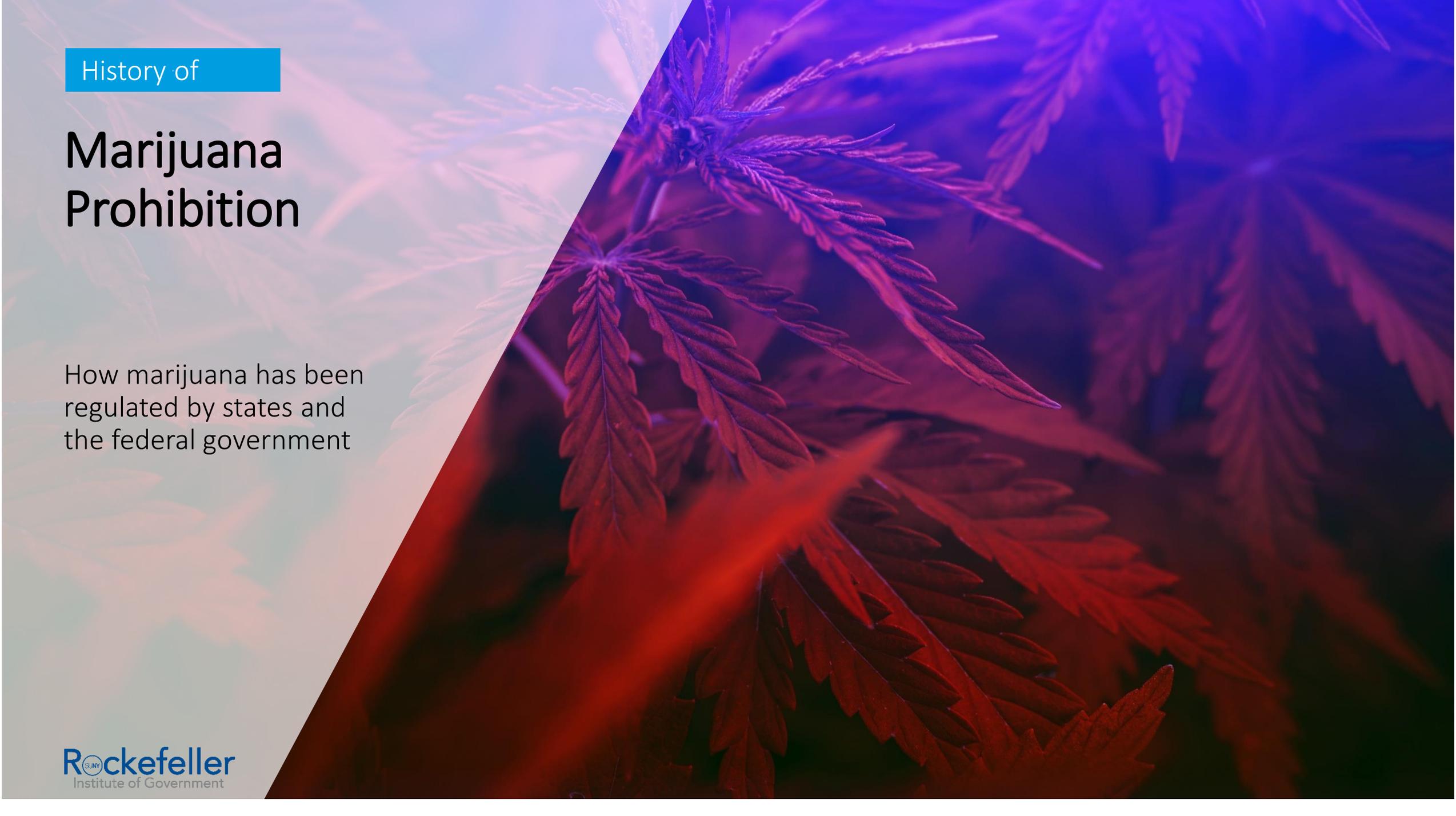


# Ifs, Ands and Buds: All You Weed to Know

---

Heather Trela  
Director of Operations and Fellow  
November 14, 2019  
NYIA Annual Meeting



History of

# Marijuana Prohibition

How marijuana has been regulated by states and the federal government

# Milestones in Marijuana Regulation

---

- + 1906 Pure Food and Drug Act
- + Between 1916 and 1931, 29 states outlawed marijuana
- + 1937 Marihuana Tax Act
  - Leary v. United States (1969)
- + 1970 Controlled Substances Act

# Controlled Substances Act

|              |  |   |
|--------------|--|---|
| Schedule I   | No currently accepted medical use and a high potential for abuse   | Heroin, LSD, marijuana, peyote, Quaaludes, and MDMA.  |
| Schedule II  | A high potential for abuse which may lead to severe psychological or physical dependence.  | Cocaine, hydromorphone, methadone, oxycodone, fentanyl, morphine, opium, codeine, hydrocodone, amphetamine                              |
| Schedule III | A moderate to low potential for physical and psychological dependence.   | Products containing less than 90 milligrams of codeine per dosage unit (Tylenol with codeine), ketamine, anabolic steroid, testosterone |
| Schedule IV  | A low potential for abuse and low risk of dependence.  | Xanax, Soma, Darvon, Darvocet, Valium, Ativan, Talwin, Ambien, Tramadol   |
| Schedule V   | Drugs with lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics | Lomotil, Motofen, Lyrica, Parepectolin, cough preparations with less than 200 milligrams of codeine or per 100 milliliters              |

# Milestones in State Legalization

---

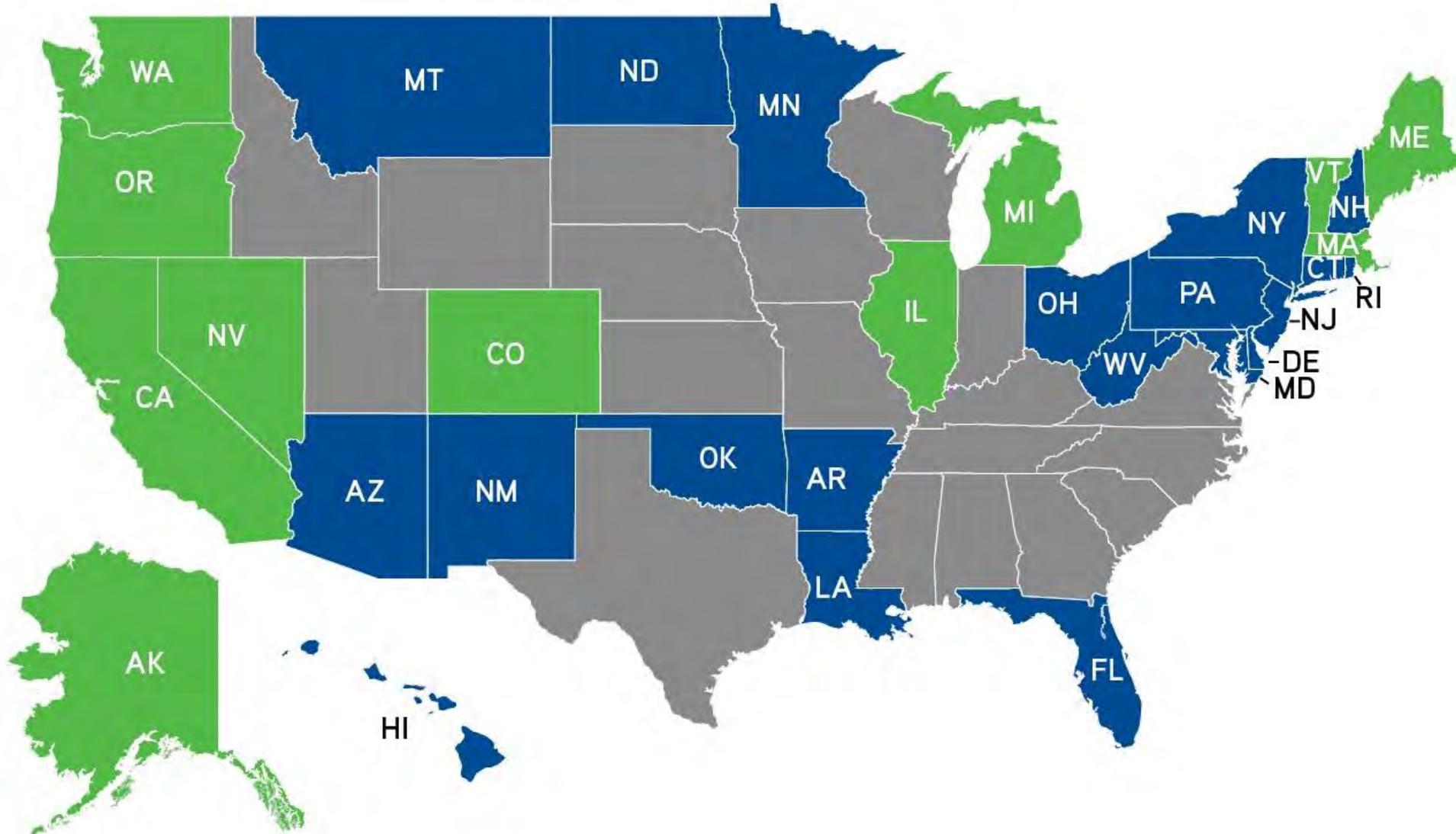
- + California (1996) – medical
- + Colorado (2014) – adult use
- + As of today, 33 states and DC have legalized marijuana in some form (medical and/or adult use)



Legalized recreational and medical marijuana



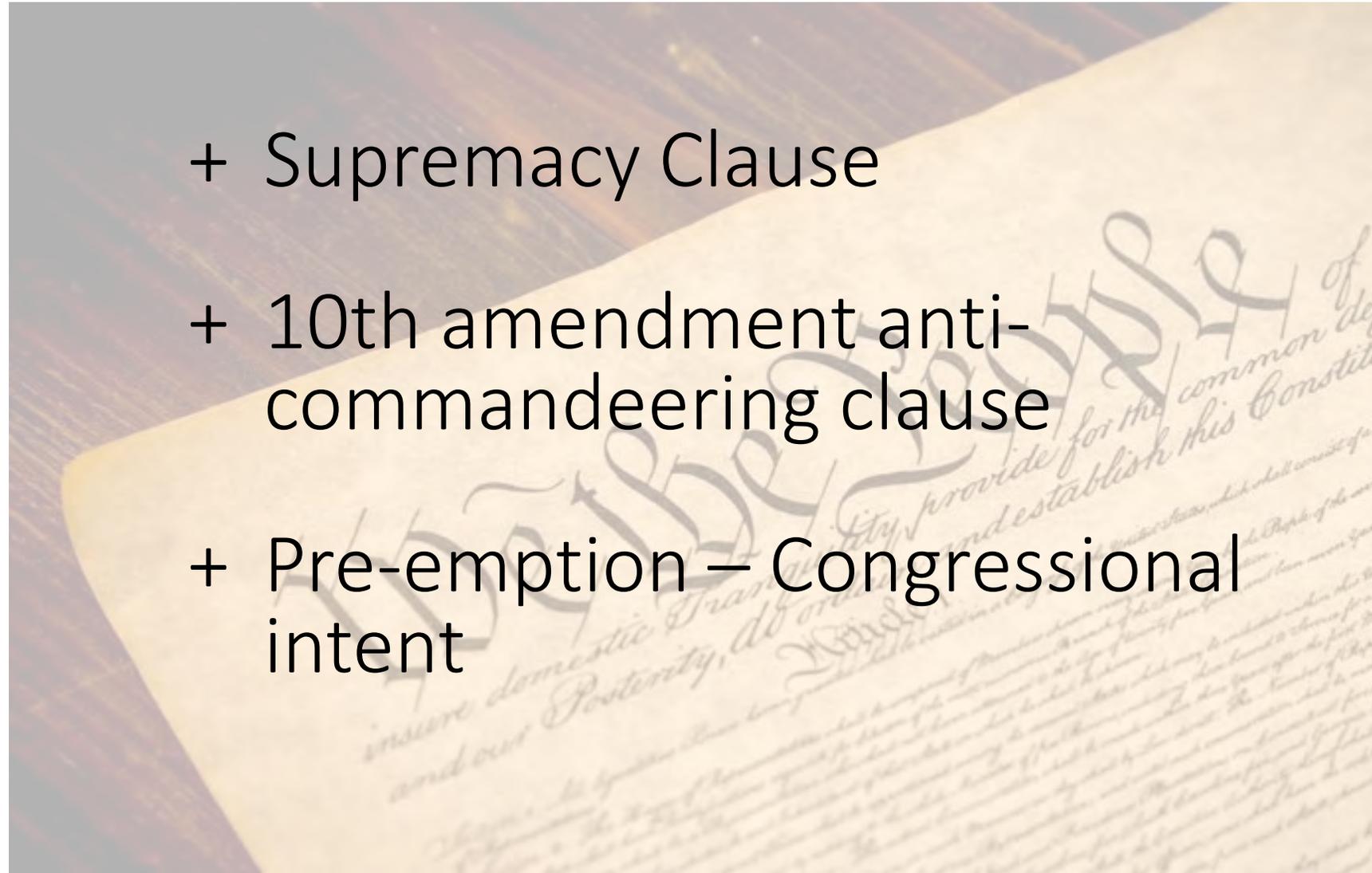
Legalized medical marijuana



# Legal justification?

---

- + Supremacy Clause
- + 10th amendment anti-commandeering clause
- + Pre-emption – Congressional intent





*No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.*

*- Section 903, CSA*

# Restraints on Federal Enforcement

## Ogden Memo (2009)

Prosecuting those who are “in clear and unambiguous compliance with existing state laws providing for the **medical** use of marijuana” were not going to be a priority

## Cole Memo (2013)

Expanded Ogden Memo to cover **adult-use marijuana**

## Rohrabacher-Farr amendment (2014)

Prohibits the Department of Justice from using federal funds to interfere with the implementation of state laws that legalize **medical** marijuana



We have a responsibility to use our best judgment ... and my view is we don't need to be legalizing marijuana.... I'm dubious about marijuana. I'm not sure we're going to be a better, healthier nation if we have marijuana sold at every corner grocery store.

- Jeff Sessions



# Clash of Laws

There are still significant challenges for marijuana implementation, despite the proliferation of state legalization.



# Banking Restrictions

---

- + Most financial institutions are leery of running afoul of federal regulations, so will not serve marijuana industry
- + Primarily a cash-only business
  - + Civil Asset Forfeiture
- + Public Safety Issue
- + Secure and Fair Enforcement Banking Act (SAFE Act)

# Taxation

---

- + State wants to find sweet spot for tax rate (revenue vs. black market)
- + States use sales tax, excise tax, or both
  - + Local Govts can also tax in some states (MA – up to 3%)
- + Marijuana industries are unable to take federal business deductions

## THE NUMBERS

# Tax Rates on Legalized Marijuana By State, as of February 2019

| State         | Cultivator excise tax  | Retail excise tax | General sales tax |
|---------------|--|-------------------|-------------------|
| Alaska        | \$50 per ounce, mature bud and flower<br>\$25 per ounce, immature or abnormal bud<br>\$15 per ounce, remainder of plant<br>\$1 per clone | n/a               | n/a               |
| California    | \$9.25 per ounce on flowers<br>\$2.75 per ounce on leaves<br>\$1.29 per ounce on fresh cannabis plant                                    | 15 percent        | 7.25 percent      |
| Colorado      | 15 percent   | 15 percent        | n/a               |
| Maine         | \$335 per pound of flower or mature plant<br>\$94 per pound of trim<br>\$1.50 per immature plant or seedling<br>\$0.30 per seed          | 10 percent        | n/a               |
| Massachusetts | n/a  | 10.75 percent     | 6.25 percent      |
| Michigan      | n/a  | 10 percent        | 6 percent         |
| Nevada        | 15 percent   | 10 percent        | 7.85 percent      |
| Oregon        | n/a  | 17 percent        | n/a               |
| Washington    | n/a  | 37 percent        | 6.5 percent       |

Note: Maine, Michigan, Vermont, and the District of Columbia have legalized recreational marijuana but do not have active markets. Vermont also has not decided on tax rates. Retail excise taxes are sometimes referred to as retail sales taxes, but apply only to recreational marijuana and are separate from general sales taxes.

SOURCE: *Forecasts Hazy for State Marijuana Revenue* (Washington, The Pew Charitable Trusts, August 2019)

# Forecasting Challenges

---

## + Standard Forecasting Models:

- Demographics
- Consumption
- Availability

+ California and Massachusetts fell short of projections

+ Nevada exceeded projections

## Economic Impact

---

- + Supply chain contained within state
- + Vertical integration
- + Investment Attraction
- + NYSDOH estimates a marijuana market size between \$1.7 and \$3.5 billion

**\$4.1 billion**

**Total economic output in New York State**

## Economic Impact – Limitations

---

- + Data challenges
- + Limitations of multiplier models
- + Drug testing and job loss

# NIMBY

---

- + Public opinion is in favor of legal marijuana
- + Less popular – dispensaries in your neighborhood
- + Local governments may opt out, but will often lose any cut of the revenue from marijuana sales
- + Approximately 50 local governments in NJ preemptively banned marijuana sales or possession

# Social Justice

---

- + Marijuana arrests have traditionally targeted people of color and lower socioeconomic groups
- + Expungement of records
- + Remove barriers to the industry
- + Reinvestment of revenue in services or communities disproportionately affected

# Keeping Marijuana Green

---

- + Marijuana may grow “like a weed,” but marijuana cultivation is not necessarily an environmentally friendly procedure.
- + Cultivation requires a large amounts of energy and water, while generating plant and packaging waste.
- + Outdoor growing can lead to deforestation and erosion.
- + EPA does not regulate pesticides used

## Legal Cannabis Cultivation in the U.S.

Legal cannabis cultivation in the U.S. was consuming an estimated 1.1 million megawatt hours of electricity annually as of 2017, enough to power 92,500 homes for a year.

Cultivation generated an estimated 472 thousand tons of electricity-related carbon in 2017; that is expected to increase as the legal markets expand over the next five years.

Electricity consumption by the legal cannabis industry was forecast to increase 162% from 2017 to 2022.



Source: [NewFrontierData.com](https://www.newfrontierdata.com)

Bloomberg Environment



The Future of  
Marijuana  
Legalization in NYS?

# Marijuana in NYS

---

- + Traditionally hard to pass adult-use marijuana legislatively
- + Regional approach?
- + Home grow?
- + Status of CBD oil?

# In the Weeds

HOW STATES ARE LEGALIZING  
MARIJUANA IN THE SHADOW  
OF A FEDERAL PROHIBITION



<https://rockinst.org/intheweeds/>



**Rockefeller**  
Institute of Government

**ROCKINST.ORG** | **@RockefellerInst**