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Introduction

In a post *District of Columbia v. Heller* and *McDonald v. City of Chicago* world, where it is now a individual right to bear arms and the growing trend toward the legalization of marijuana, it raises the

question of whether “lawful” users of marijuana should be allowed to own firearms to fulfill the same needs non-users of marijuana has, for self-defense, home defense, and recreational use.¹

In the fall of 2010, a woman by the name of S. Rowan Wilson applied for and obtained a medical marijuana card due to her condition with severe dysmenorrhea.² Subsequently Ms. Wilson also applied to purchase a firearm at a gun store in Mound House, Nevada.³ Nevada is a state that allows for medical marijuana.⁴ However, due to the federal conflict with marijuana being placed as a Schedule 1 drug on the Controlled Substance Act, Ms. Wilson was not allowed to purchase a handgun.⁵

In *Wilson v. Lynch*, a ruling of first impression, the 9th U.S. Circuit Court of Appeals upheld portions of the federal Gun Control Act, 18 U.S.C.A § 922(d)(3), against a challenge by Ms. Wilson.⁶ The federal appeals court held that federal law criminalizing firearm purchases by holders of state medical marijuana cards does not violate the Second Amendment.⁷ Under *District of Columbia v. Heller*, restrictions on “core” Second Amendment activities, such as the purchase of a firearm for the defense of oneself or one's home, pass constitutional muster only if they directly advance an important state goal.⁸ *Wilson* argued that the restrictions do not advance an important state goal because there is no proven link between legal users of medical marijuana and violent crimes.⁹ A unanimous three-judge panel rejected that reasoning because there are data showing a strong correlation between gun crimes and illegal drug use.¹⁰ U.S. District Judge Jed S. Rakoff, sitting by designation, wrote for the panel:

It may be argued that medical marijuana users are less likely to commit violent crimes. They also may be less likely than other illegal drug users to interact with law enforcement officers or make purchases through illicit channels. But those hypotheses are not sufficient to overcome Congress' reasonable conclusion that the use of such drugs raises the risk of irrational or unpredictable behavior with which gun use should not be associated.¹¹

The astonishing aspect of the *Wilson v. Lynch* case is that Ms. Wilson is not a marijuana user at all.¹² Rather, she contends that she was exercising her First Amendment rights and the marijuana

¹ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 1 (2016); Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 161 (2017); Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 3 (2017)

² *Wilson v. Holder*, 7 F. Supp. 3d 1104, 1110 (D. Nev. 2014)

³ *Id.*

⁴ *Wilson v. Lynch*, 835 F.3d 1083, 1088 (9th Cir. 2016)

⁵ *Wilson v. Holder*, 7 F. Supp. 3d 1104, 1110 (D. Nev. 2014)

⁶ Michael Scott Leonard, *9th Circuit Upholds U.S. Ban on Guns for Medical Marijuana Users* *Wilson v. Lynch*, 24 Westlaw Journal Health Law 7, 1 (2016)

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Wilson v. Lynch*, 835 F.3d 1083, 1092 (9th Cir. 2016)

card was used as a political statement.¹³ However, the court held that being a card holder in itself is enough to prevent her from purchasing a firearm because a marijuana card holder is more likely than not, to use marijuana over a non-card holder.¹⁴

With the passage of initiatives on recreational use in Colorado, Washington, California and numerous states that allow medical marijuana, the fundamental rights of gun ownership are infringed upon when people who are recreational users and more importantly people who are diagnosed with a medical condition, are systemically marginalized due to their choice of intoxicant/medicine.¹⁵ A major contribution to this is the misunderstanding and fear of Marijuana, due to decades of misinformation that still persist and accepted as fact by many people.¹⁶

Before constitutional rights of the people guaranteed by the Second Amendment (*Heller* and *McDonald*) are infringed upon, there must be considerations of the effect it may cause to law-abiding citizens who uses Marijuana recreationally or medically.¹⁷ Should the rights of medical marijuana users be deprived of that right? In situations where people with medical conditions who find benefit from the use of marijuana, they now have to choose between an ineffective treatments over a treatment that may work better for them.¹⁸ However, the choice they make has legal consequences.¹⁹ These people would be forced to make the decision of whether to have the ineffective treatment and retain the means of modern self-defense or choose the more effective treatment and give up the right.²⁰

Recreational marijuana use has long been associated with minorities dating back to the late 1800's.²¹ Many of the laws written and stories told, most notably the film "Reefer Madness", stoked racial fears in their time.²² In 2017, those misconceptions are no longer adhered to.²³ Should recreational users be deprived of the right to bear arms? It is proven that alcohol is strongly correlated with violence, yet users of alcohol are free to purchase firearms.²⁴ Isn't time that as a society, we no longer further the legacy of misconception, but enact laws that are reflective of current understandings of marijuana?²⁵ The Second Amendment is a fundamental right of all Americas. And

¹³Id.

¹⁴Id. at 1094

¹⁵Melia Robinson, It's 2017: Here's where you can legally smoke weed now, Business Insider, Jan. 8, 2017, <http://www.businessinsider.com/where-can-you-legally-smoke-weed-2017-1>

¹⁶Margaret J. Goldstein, Legalizing Marijuana Promises and Pitfalls, 20 (2016)

¹⁷Steve Fox , Paul Armentano, Mason Tvert, Marijuana is Safer: So Why Are We Driving People to Drink?, 24 (2013)

¹⁸Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, Marijuana Legalization What Everyone Needs to Know, 207 (2016)

¹⁹Wilson v. Lynch, 835 F.3d 1083, 1100 (9th Cir. 2016)

²⁰Id.

²¹Margaret J. Goldstein, Legalizing Marijuana Promises and Pitfalls, 20 (2016)

²²Id.

²³Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 3 (2017)

²⁴ALCOHOL, DRUGS AND CRIME, National Council on Alcoholism and Drug Dependence, Inc, June 27, 2015, <https://www.ncadd.org/about-addiction/alcohol-drugs-and-crime>

as a fundamental right, users of marijuana should not be stigmatized by antiquated views that were in large part once used to stoke racial fears.²⁶

Gun-related violence in the United States should not be discounted. There are certain medical conditions where it would not be ideal for gun ownership.²⁷ However, individuals should not be punished solely for the fact that they use medical marijuana as a treatment for their condition.²⁸ It only serves to subjugate a vulnerable class of citizens and further deprive them of a tool in which they can use for self-defense.²⁹ What I am advocating is that marijuana use alone should not be the sole indicator of whether an individual would or would not be responsible with a firearm. Doing so would not only deprive individuals of their fundamental rights, but also deprive them of an important tool for self-defense, sporting, and putting food on their table.³⁰ Rights (an “individual” right after *Heller*) that are uniquely American because it is deeply rooted in our Nation’s history and tradition.³¹

This article will go over the historical misconceptions of marijuana and the subsequent regulations based upon those misconceptions. With this understanding, it helps to explain why marijuana carries a stigma despite the fact that marijuana uses alone does not cause people to become violent.³² In addition, this article will explore the current trend in state marijuana regulation and the medical aspects which shows that marijuana can be a treatment for a variety of illnesses.³³ However, despite this, there are opponents who still adhere to the historical misconceptions. With regards to that, many gun control regulations were created prior to the finding of the individual right to bear arms held in *District of Columbia v. Heller*. There are other factors to consider in regards to the placement of marijuana on the Controlled Substance Act (CSA) and the subsequent need to restrict firearm possession from marijuana users. These factors include health and safety reasons. Finally, this article will address the impact on legalized marijuana and guns, as well as the statutory intent of the Gun Control Act of 1968 (GCA).

A. Misconceptions of Marijuana, Historically

It is important to understand the historical context on how marijuana has been misclassified and the misconception that has help shaped our current laws. With this understanding, it helps to explain why marijuana carries a stigma despite the fact that marijuana uses alone does not cause

²⁵ Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 7 (2017)

²⁶ Jesse Ventura & Jen Hobbs, *Jesse Ventura’s Marijuana Manifesto*, 47 (2016)

²⁷ Halimah Abdullah, *Should vets with PTSD, mental illness still have access to guns?*, CNN, February 25, 2015, <http://www.cnn.com/2013/02/04/politics/navy-seal-sniper-shooting/>

²⁸ *Wilson v. Lynch*, 835 F.3d 1083, 1100 (9th Cir. 2016)

²⁹ *Id.*

³⁰ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 7 (2016)

³¹ *Id.* at 11 (2016)

³² Christopher Ingraham, *Researchers Got People Drunk Or High, Then Made A Fascinating Discovery About How We Respond*, Washington Post, July 20, 2016, https://www.washingtonpost.com/news/wonk/wp/2016/07/20/researchers-have-finally-found-out-why-youre-such-a-mean-drunk/?utm_term=.151e6da3af27

³³ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 4 (2016)

people to become violent.³⁴ The misconception and misrepresentation of Marijuana date back decades.

As early as 1853, recreational cannabis was considered a “fashionable” narcotic.³⁵ By 1885, you could find hashish parlors in every major city from New York to San Francisco.³⁶ In the early 1900’s marijuana was an element of the jazz scene. Many jazz musicians smoked and wrote songs about marijuana.³⁷ However, during this era, racial prejudice and discrimination were rampant, and many Anglo-Americans made associations between marijuana use, racial minorities, jazz music, and amoral behavior.³⁸

The Federal Bureau of Narcotics (FBN) was formed in 1930, headed by Harry L. Anslinger.³⁹ To better fund his bureau, Anslinger aimed to convince mainstream white Americans that marijuana was a threat to the nation’s youth, a concern that required an aggressive federal response.⁴⁰ Anslinger fed the newspapers fantastical tales about marijuana-crazed ax murderers, rapists, and degenerates, writing many of the articles himself.⁴¹

In particular, he latched on to the story of a young man named Victor Licata, who had hacked his family to death with an ax, supposedly while high on cannabis.⁴² It was discovered many years later, however, that Licata had a history of mental illness in his family, and there was no proof he ever used the drug.⁴³

The problem was, there was little scientific evidence that supported Anslinger’s claims.⁴⁴ He contacted 30 scientist and 29 told him cannabis was not a dangerous drug.⁴⁵ But it was the theory of the single expert who agreed with him that he presented to the public cannabis was an evil that should be banned and the press ran with this sensationalized version.⁴⁶

News and media such as the 1936 film *Tell Your Children*, helped further spread the propaganda (later called *Reefer Madness*). The film dramatized marijuana-addled characters jumping out of windows, attempting rape, shooting one another, going insane, and running down pedestrians in cars.⁴⁷

³⁴ Christopher Ingraham, *Researchers Got People Drunk Or High, Then Made A Fascinating Discovery About How We Respond*, Washington Post, July 20, 2016, https://www.washingtonpost.com/news/wonk/wp/2016/07/20/researchers-have-finally-found-out-why-youre-such-a-mean-drunk/?utm_term=.151e6da3af27

³⁵ Jesse Ventura & Jen Hobbs, *Jesse Ventura’s Marijuana Manifesto*, 44 (2016)

³⁶ *Id.*

³⁷ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 20 (2016)

³⁸ *Id.*

³⁹ Jesse Ventura & Jen Hobbs, *Jesse Ventura’s Marijuana Manifesto*, 46 (2016)

⁴⁰ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 20 (2016)

⁴¹ *Id.*

⁴² CYDNEY ADAMS, *The man behind the marijuana ban for all the wrong reasons*, CBS News, Nov. 17, 2016, <http://www.cbsnews.com/news/harry-anslinger-the-man-behind-the-marijuana-ban/>

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 20 (2016)

I. Marijuana Tax Act

In 1937, the Marijuana Tax Act Hearings were held with the House of Representatives Ways and Means Committee.⁴⁸ Anslinger testified claiming, “Marijuana is the most Violence-causing drug in the history of mankind.”⁴⁹ Anslinger added that Spaniards, Mexican-Americans, Latin Americans, Filipinos, African Americans, and Greeks committed “50 percent of all violent crimes” in the United States and these crimes were a direct result of marijuana use.⁵⁰

Marijuana was presented as the agent by which the underworld class hoped to enslave American youth.⁵¹ However, Anslinger noted that heroin addicts and marijuana users came from totally different classes and that the use of one drug was unrelated to the use of the other:

Mr. Anslinger. This drug is not being used by those who have been using heroin and morphine. It is being used by a different class, by a much younger group of people. The age of the morphine and heroin addict is increasing all the time, whereas the marihuana smoker is quite young.

Mr. Dingell. I am just wondering whether the marihuana addict graduates into a heroin, an opium or cocaine user.

Mr. Anslinger. No sir; I have not heard of a case of that kind. I think it is an entirely different class. The marihuana addict does not go in that direction.so

The hearings shed no more light on who was using the drug and 10 what numbers.⁵²

Dr. William C. Woodward, representing the American Medical Association, spoke in opposition to the bill, challenging arguments about marijuana’s dangers and saying that the drug had medicinal value.⁵³ Congress disregarded Woodward’s testimony, and the bill passed.⁵⁴

II. Boggs Amendment to the Harrison Narcotics Act

The FBN had begun its educational campaign for harsher marijuana penalties immediately after passage of the Marijuana Tax Act.⁵⁵ In the early years, the campaign was particularly effective with judges.⁵⁶ For example, in one of the first cases under the Tax Act, a Colorado judge stated:

⁴⁸ Jesse Ventura & Jen Hobbs, *Jesse Ventura’s Marijuana Manifesto*, 46 (2016)

⁴⁹ *Id.* at 47

⁵⁰ *Id.*

⁵¹ Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev. 1055 (1970)

⁵² *Id.*

⁵³ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 21 (2016)

⁵⁴ *Id.*

⁵⁵ Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev., 1068; 1071 (1970)

⁵⁶ *Id.*

Guns and Weed by Michael Duong

I consider marihuana the worst of all narcotics-far worse than the use of morphine or cocaine. Under its influence men become beasts, just as was the case with [the defendant]. Marihuana destroys life itself. I have no sympathy with those who sell this weed. In the future, I will impose the heaviest penalties. The Government is going to enforce this new law to the letter.⁵⁷

As late as 1951, the rationale that marijuana causes crime, pauperism and insanity became accepted.⁵⁸ The 1951 Boggs Amendment to the Harrison Narcotics Act increased prison terms for all narcotics offenses.⁵⁹ Marijuana and other narcotics were lumped together as a result of the Act's provision for uniform penalties.⁶⁰ New testimony that marijuana was unlikely to be addictive was buried under the new rationale for harsh penalties against offenders of the marijuana laws.⁶¹ The hearings before the Subcommittee of the House Ways and Means Committee and the floor debate show that the primary reason for the passage of the Boggs Act was the increase in narcotic use among white school children in the period 1948-1951.⁶²

On the other hand, New York Mayor Fiorello LaGuardia's 1944 Report reached the opposite conclusion, that the majority of marijuana smokers were Negroes and Latin-Americans.⁶³ Marijuana smoking was not widespread among school children.⁶⁴

A paper filed as an exhibit to the hearings on the Boggs Act by Dr. Harris Isbell stated, that marijuana was not physically addictive.⁶⁵ Before the Kefauver Committee, he testified:

[M]arijuana smokers generally are mildly intoxicated, giggle, laugh, bother no one, and have a good time. They do not stagger or fall and ordinarily, will not attempt to harm anyone. It has not been proved that smoking marijuana leads to crimes of violence or to crimes of a sexual nature. Smoking marijuana has no unpleasant after effects, no dependence is developed on the drug, and the practice can easily be stopped at any time. In fact, it is probably easier to stop smoking marijuana cigarettes than tobacco cigarettes. In predisposed individuals, marijuana may precipitate temporary psychoses and is, therefore, not an innocuous practice with them.⁶⁶

⁵⁷ Id.

⁵⁸ Id. at 1072

⁵⁹ Id.

⁶⁰ Id. at 1063

⁶¹ Id.

⁶² Id. at 1064

⁶³ Id. at 1070

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

Dr. Isbell's statements were supported by other doctors, prison officials, and perhaps most significantly by the statement of a number of narcotics addicts.⁶⁷ However, legislators approved increased penalties for marijuana users anyways.⁶⁸

During hearings for the Boggs Amendment, Commissioner Anslinger, put forth the stepping stone (gateway) theory.⁶⁹ The unproven speculation that marijuana use leads people to harder, more dangerous, and more addictive drugs.⁷⁰ Anslinger told lawmakers that:

Over 50 percent of those young [heroin] addicts started on marijuana smoking. They started there and graduated to heroin; they took the needle when the thrill of marijuana was gone.⁷¹

Many others, including doctors, crime prevention experts, police, and narcotics bureau officials testified to the link between marijuana use and ultimate heroin addiction.⁷² Representative Hale Boggs summed up this danger with:

Our younger people usually start on the road which leads to drug addiction by smoking marijuana. They then graduate into narcotic drugs-cocaine, morphine, and heroin. When these younger persons become addicted to the drugs, heroin, for example, which costs from \$8 to \$15 per day, they very often must embark on careers of crime . . . and prostitution . . . in order to buy the supply which they need.⁷³

III. The Narcotic Control Act

The Narcotic Control Act of 1956 was based on the same premise as Boggs Act.⁷⁴ Few if any of the legislators recognized that marijuana was in any way different from the physically addictive narcotics. By this time the stepping stone concept (gateway drug) was now widely accepted.⁷⁵ In a statement reflecting both ignorances of the basic characteristics of marijuana and naive acceptance of the stepping stone concept, Senator Daniel (Chairman of the Senate subcommittee that investigated the drug problem) described marijuana:

That is a drug which starts most addicts in the use of drugs. Marihuana, in itself a dangerous drug, can lead to some of the worst crimes committed by those who are addicted to the habit. Evidently, its use leads to the heroin habit and then to the final destruction of the person addicted.⁷⁶

⁶⁷Id. at 1073

⁶⁸Id.

⁶⁹Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 22 (2016)

⁷⁰Id.

⁷¹Id.

⁷²Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev., 1073 (1970)

⁷³Id. at 1073

⁷⁴Id. at 1080

⁷⁵Id. at 1079

⁷⁶Id.

There was no dissent from the proposition that harsher penalties were the means to eliminate illicit use and sale of all drugs.⁷⁷

IV. The 1960's: The Omnibus Crime Control and Safe Streets Act of 1968 and the Gun Control Act of 1968.

In the 1960's, the crime issue was part of a larger complex of campaign themes aimed to exploit the fear of rapid social change, themes of racial competition, moral conventionality, and defense against the "new morality."⁷⁸ The changing times of the 1960's were seen as a threat to the values of hard-working, upstanding middle class Americans.⁷⁹ Senator Goldwater put it in accepting the 1964 Republican presidential nomination:

Tonight there is violence in our streets, corruption in our highest offices, aimlessness among our youth, anxiety among our elderly, and there is a virtual despair among the many who look beyond material success toward the inner meaning of their lives. . . . The growing menace in our country tonight, to personal safety, to life, to limb and to property, in homes, in churches, in the playgrounds and places of business, particularly in our great cities, is the mounting concern of every thoughtful citizen in the United States. Security from domestic violence, no less than from foreign is the most elementary and fundamental purpose of any government, and a government that cannot fulfill this purpose is one that cannot long command the loyalty of its citizens.⁸⁰

Before the Omnibus Crime Control and Safe Streets Act of 1968 and the Gun Control Act of 1968 were passed, there was a wave of violence. Twenty-three people had died in five days of rioting in Newark, forty-three had lost their lives in Detroit, and numerous others had been killed or injured in a wave of violence which affected most of the nation's major cities and, as a whole, constituted the worst series of civil disturbances in this nation's history.⁸¹ Additional violence had claimed the lives of Martin Luther King, Jr., and Robert F. Kennedy.⁸² Richard Nixon used these events and skillfully played on the use of the law and order to channel resentment against the challenges to conventional values when he developed his campaign.⁸³ Nixon's rhetoric clearly affected Congressional action on the Safe Streets Act without at the same time providing content to the question of how to reduce crime.⁸⁴

⁷⁷Id.

⁷⁸Austin Sarat & Malcolm Feeley, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration*, 35 (1980)

⁷⁹Id.

⁸⁰Id.

⁸¹Id. at 43

⁸²Id.

⁸³Id.

⁸⁴Id.

In 1968, President Lyndon Johnson signed the Gun Control Act.⁸⁵ The push for new gun laws was trying to keep the criminals, felons, and mentally insane from having weapons.⁸⁶ House Bill 17735, which became the Gun Control Act of 1968, has marijuana listed first before any other drugs as a violation of § 922(g)(3):

It shall be unlawful for any person who is an unlawful user of or marihuana or any depressant or stimulant drug or narcotic drug.⁸⁷

V. War on Drugs

In 1969, President Richard Nixon launched what would later become the War on Drugs, to combat the counterculture of the 1960's.⁸⁸ The War on Drugs included the 1970 Comprehensive Drug Abuse and Control Act, which combined federal antidrug laws under one statute.⁸⁹ A section of the law called the Controlled Substance Act (CSA) placed Marijuana into Schedule I.⁹⁰ Raymond Shafer, a former governor of Pennsylvania, chaired the National Commission on Marihuana and Drug Abuse was charged with assessing the dangers of Marijuana.⁹¹ However, the 1,184-page report titled, "Marihuana: A Signal of Misunderstanding" found that "neither the marijuana user nor the drug itself can be said to constitute a danger to public safety."⁹² The Shafer Commission called for the decriminalization of marijuana possession for personal use.⁹³ The Commission concluded that marijuana did not constitute a health risk, was not a gateway drug, and did not constitute a danger to public safety.⁹⁴ President Nixon soundly rejected the conclusion and Congress never acted on its recommendations.⁹⁵ However, after the Shafer report was released, some states began to rethink the wisdom of criminalizing marijuana possession for personal use.⁹⁶

In 1982, President Ronald Reagan officially started the War on Drugs and in a radio address, he stated that:

We're making no excuses for drugs hard or soft, or otherwise. Drugs are bad, and we're going after them... We've taken down the surrender flag and run up the battle flag. And we're going to win the war on drugs."⁹⁷

⁸⁵U.S. *gun control: A history of tragedy, legislative action*, CBS News, April 13, 2013, <http://www.cbsnews.com/news/us-gun-control-a-history-of-tragedy-legislative-action/>

⁸⁶Id.

⁸⁷H.R. 17735, 90th Cong. (1968) <https://www.gpo.gov/fdsys/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213-2.pdf>

⁸⁸Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 24 (2016)

⁸⁹Id.

⁹⁰Id.

⁹¹Id.

⁹²Id.; Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 204 (2017)

⁹³Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 204 (2017)

⁹⁴Id.

⁹⁵Id.

⁹⁶Id. at 207

⁹⁷Michelle Alexander, *The New Jim Crow*, 9 Ohio St. J. Crim. L. 7, 15 (2011)

Carlton Turner, Ronald Reagan's chief drug policy adviser, echoed Anslinger:

No young person starts with cocaine. They start with marijuana, alcohol or pills and go up. Our single best indicator of who's using cocaine is who has used marijuana over 100 times.⁹⁸

Due to the War on Drugs, for more than a decade, black drug dealers and users became regulars in newspaper stories and saturated the evening TV news, forever changing our conception of who the drug users and dealers are.⁹⁹ Media images of violence in ghetto communities led many to believe that the drug war focused on the most serious offenders but, that is not the truth.¹⁰⁰ During the 90's, the period of the most dramatic expansion of the drug war, nearly 80 percent of the increase in drug arrests was for possession of marijuana.¹⁰¹ A drug generally considered less harmful than alcohol or tobacco and at least as prevalent in middle-class white communities as in the inner city.¹⁰²

The misinformation of Marijuana was not created overnight, but rather the misinformation is deeply political. Similar to the rationale of the legislators, state and federal judges translated what they knew of the marijuana's mythical effects into overt hostility.¹⁰³ The task of Marijuana proponents are to dispel the preconceived notions of Marijuana, a long history which has been accepted by many people as truth.

B. The National Trend

Marijuana is the most commonly used illicit drug in the United States.¹⁰⁴ In 2015, there were an estimated 22.2 million individuals aged 12 or older, who were current (past month) users.¹⁰⁵ However, marijuana is currently listed as a Schedule I controlled substance, under the Controlled Substance Act.¹⁰⁶ This indicates that the federal government has determined that:

The drug or other substance has a high potential for abuse. The drug or other substance has no currently accepted medical use in treatment in the United States. Lastly, there is a lack of accepted safety for use of the drug or other substance under medical supervision.¹⁰⁷

(2011)

98 Id. at 28

99 Id. at 17

100 Id.

101 Id. at 18

102 Id.

103 Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev., 1083 (1970)

104 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 20 (2017)

105 Id.

106 Id. at 2

107 Id.

Gallup poll data from October 2016, showed that 60% of surveyed adults feel that marijuana should be legalized.¹⁰⁸ Support for legalization has more than doubled over the last 20 years.¹⁰⁹ In addition, nearly 60% of respondents indicate that the federal government should not enforce federal marijuana prohibition laws in those states that allow for its use.¹¹⁰ As of March 2017, nearly 90% of the states, as well as Puerto Rico and the District of Columbia, allowed for the medical use of marijuana in some capacity.¹¹¹ In 2016, more than half (60%) of surveyed U.S. adults expressed that marijuana should be legalized.¹¹²

I. Medical Marijuana: Background

In 1996, California became the first state to allow the use of medicinal marijuana.¹¹³ As of March 2017, over half of the states, the District of Columbia, Puerto Rico, and Guam have policies allowing for the medicinal use of marijuana.¹¹⁴ Seventeen additional states allowed for limited access medical marijuana, which is cannabis with low THC content know as CBD oil.¹¹⁵

On February 2017, in the White House press statement, the Trump Administration signaled some acceptance of the medicinal use of marijuana:

“[t]he President understands the pain and suffering that many people go through who are facing especially terminal diseases and the comfort that some of these drugs, including medical marijuana, can bring to them.”¹¹⁶

However, marijuana’s placement on Schedule I of the CSA, means that it has no currently accepted medical use, according to the federal government.¹¹⁷ Under federal law, marketing a drug as medicine requires approval from the Food and Drug Administration (FDA).¹¹⁸ The FDA has not approved marijuana, any drug containing marijuana, or any drug containing a plant-derived chemical for medicinal use.¹¹⁹ The FDA has, however, approved two drugs containing synthetic THC.¹²⁰ Drugs containing plant-derived THC and/or CBD are also in the development and approval process.¹²¹

108 Id. at 3

109 Id.

110 Id.

111 Id. at 7.

112 Id.

113 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 9 (2017)

114 Id.

115 Id.

116 Id. at 34

117 Id. at 3

118 Id.

119 Id.

120 Id. at 4

121 Id.

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Generally, medical marijuana is just a label because it could be used for recreational purposes as well.¹²² Some states' medical marijuana laws are designed to ensure that people in genuine medical need are able to obtain a supply while discouraging abuse of the medical system by people who want it for nonmedical purposes.¹²³

Some voters support medical marijuana only for its therapeutic potential.¹²⁴ However, there are others that see it as a steppingstone to the path of full legalization.¹²⁵ It softens the public's attitudes toward marijuana overall. And make full legalization seem less threatening, and it seemed to have worked for states like Washington, Colorado, Oregon, and California.¹²⁶

a. Medical Marijuana: Treatments

Individuals use marijuana to treat medical issues such as lack of appetite, nausea, chronic pain, spasticity, anxiety, and other maladies; however, the efficacy of this treatment is unclear from available scientific evidence.¹²⁷

Three percent of all adult Coloradans have medical marijuana cards, while the comparable figure in Nevada is four-tenths of one percent; in Delaware, it is four-hundredths of one percent.¹²⁸ Perhaps many Delawareans are being deprived of essential medicine, or perhaps many medical marijuana "patients" in Colorado suffer from nothing more than the aches and ills common to the human condition.¹²⁹

In 2009, CNN's Dr. Sanjay Gupta wrote an essay for Time magazine arguing against medical marijuana.¹³⁰ But in August 2013, he publicly apologized and explained why he changed his mind.:

I mistakenly believed the Drug Enforcement Agency listed marijuana as a schedule 1 substance because of sound scientific proof...and was too quick to lump legitimate patients together with those who only wanted medical-marijuana so they could get high.¹³¹

About a week later, Gupta's documentary called *Weed* aired on CNN.¹³² The show interviewed medical doctors and highlighted the stories of patients who reportedly benefitted from medical marijuana, including a child named Charlotte Figi.¹³³ She was a 3-year-old with the Dravet syndrome and experienced hundreds of seizures each week.¹³⁴

¹²² Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 203 (2016)

¹²³ Id.

¹²⁴ Id. at 211

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 4 (2017)

¹²⁸ Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 203 (2016)

¹²⁹ Id.

¹³⁰ Id. at 206

¹³¹ Id. at 207

¹³² Id.

¹³³ Id.

¹³⁴ Id.

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Dravet syndrome is a severe, life-threatening form of epilepsy. It causes seizures by sudden bursts of electrical energy in the brain.¹³⁵ During the most severe seizures, it causes the muscles to jerk, convulse and the person loses consciousness.¹³⁶ Charlotte had her first seizure when she was three months old and by the age of two, she was diagnosed with Dravet.¹³⁷ To reduce the number and severity of Charlotte's seizures, doctors prescribed powerful pharmaceutical drugs and put her on diets designed to control seizures.¹³⁸ But, the treatments worked only briefly.¹³⁹ The seizures came back and the side effects of the drugs took a heavy toll on Charlotte's brain and body.¹⁴⁰ She was hospitalized repeatedly, and her heart had stopped several times.¹⁴¹ She was confined to a wheelchair and had to be fed through a tube.¹⁴² She couldn't walk, talk, or eat on her own.¹⁴³ By 2012 Charlotte was having about three hundred severe seizures per week.¹⁴⁴ Some of them lasted for two to four hours.¹⁴⁵ Paige, Charlotte's mother said the doctors told them to prepare for her death.¹⁴⁶

But, the Figis did not give up hope.¹⁴⁷ Charlotte's father Matt, spent hours online looking for treatments.¹⁴⁸ He found a video about a boy with Dravet, whose parents were feeding him oil derived from the cannabis plant.¹⁴⁹ After starting on regular doses of the oil, the boy had dramatically fewer seizures. Matt told his wife about the video and urged that they start Charlotte on a similar treatment.¹⁵⁰ At first, Paige resisted because she knew that marijuana was a mind-altering drug¹⁵¹. However, the boy in the video ingested oil from a strain of cannabis that is very low in THC.¹⁵² Instead, the strain was rich in CBD and believed to have medical benefits.¹⁵³ The Figis decided to

¹³⁵ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 4 (2016)

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Id.

¹⁴⁵ Id. at 5

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id. at 6

¹⁵³ Id.

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feed the same kind of oil to Charlotte, due to the limited choices they had.¹⁵⁴ Many doctors were reluctant but, two local doctors did provide the required signatures.¹⁵⁵ Paige said:

When we first gave her the cannabis oil, she went from having hundreds of seizures a day to none. She went for seven days without a twitch. It was unbelievable.¹⁵⁶

By 2013, after a year on CBD oil, six-year-old Charlotte had only a few seizures each month.¹⁵⁷ She was walking, talking, riding a bike, eating normally, laughing, and enjoying life.¹⁵⁸ Although she lagged behind kids her age, she was catching up quickly.¹⁵⁹ Matt credits the CBD oil with saving her life.¹⁶⁰ After Gupta's show *Weed* aired, Gupta wrote¹⁶¹:

Legislators from several states have reached out to me, eager to inform their own positions and asking to show the documentary to their fellow lawmakers.

Some families have moved to Colorado so they could get access to "Charlotte's Web" (marijuana strain) for their sick children.¹⁶² After the airing of Gupta's show, the number of children registered as medical-marijuana patients increased from sixty in August 2013, to more than four hundred within a year.¹⁶³ CBD, however; does not work for every patient and that some of the early claims were wildly overoptimistic, but anecdotes about CBD's potential are extremely powerful.¹⁶⁴ Especially for parents who have exhausted other options to stop their children from suffering, frequent and violent seizures.¹⁶⁵

Early trials at the [NYU Langone Medical Center](#), showed a 50% reduction in the frequency of certain seizures in children and adults, in a study of 213 patients.¹⁶⁶ And the potential of medical marijuana is not limited to epilepsy. Medical Marijuana shows promise in helping with conditions such as AID/HIV, Alzheimer's, Arthritis, Asthma, Cancer, Chronic Pain, Crohn's disease, Glaucoma, Multiple Sclerosis, PTSD, Parkinson's disease, and ALS¹⁶⁷

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 207 (2016)

¹⁶² Id.

¹⁶³ Id. at 208

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Jen Christensen, *10 diseases where medical marijuana could have impact*, CNN, April 16, 2015 <http://www.cnn.com/2015/04/15/health/marijuana-medical-advances/>

¹⁶⁷ Id. & Monivette Cordeiro, *Florida has new, complex marijuana laws. Here's what they really mean*, Orlando Weekly, April 19, 2017, <http://www.orlandoweekly.com/orlando/florida-has-new-complex-marijuana-laws-heres-what-they-really-mean/Content?oid=3889964>

Despite the promises of medical marijuana, there are factors for why it is not prescribed more often. One factor that discourages most physicians from recommending medical marijuana, is the lack of laboratory-tested and standardized products.¹⁶⁸ Medical-marijuana products aren't standardized and underlying research hasn't been done to specify how much of what sort of cannabis will serve the needs of a patient of each medical condition.¹⁶⁹

Another factor is the side effects. A substantial proportion of those who use marijuana on a daily basis for an extended period become dependent.¹⁷⁰ For those who have tried marijuana, only about one-third become dependent but, dependency among those on an ongoing basis are roughly triple.¹⁷¹ For these reasons and others, most medical societies oppose medical marijuana.¹⁷²

II. The Current State of Misinformation

Despite current trends in studies and public opinion, misinformation about marijuana still seems to persist. A common misconception is the strawman argument, "the gateway theory" because it completely ignores the fact that most users of illicit substances start off with alcohol and nicotine before any other illicit substances.¹⁷³ Additionally, most users of marijuana does not go on to use harder drugs.¹⁷⁴ The current Attorney General Jeff Session has made comments about marijuana, which revealed his views are not up to date with the current benefits of marijuana. Session's perceived harm is not in line with emerging information such as marijuana as a possible replacement for opioids.¹⁷⁵ In contrast to the former belief that marijuana use leads to opioid (heroin) use (see *Supra*).

On March 15, 2017, Session's speech regarding marijuana in association with the current opioid addiction further indicates the long-standing misrepresentation and misunderstanding of marijuana:

I realize this may be an unfashionable belief in a time of growing tolerance of drug use. But too many lives are at stake to worry about being fashionable. I reject the idea that America will be a better place if marijuana is sold in every corner store. And I am astonished to hear people suggest that we can solve our heroin crisis by legalizing marijuana so people can trade one life-wrecking dependency for another that's only slightly less awful. Our nation needs to say clearly once again that using drugs will destroy your life.¹⁷⁶

¹⁶⁸ Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 210 (2016)

¹⁶⁹ Id.

¹⁷⁰ Id.

¹⁷¹ Id. at 211

¹⁷² Id.

¹⁷³ Maia Szalavitz, *Marijuana as a Gateway Drug: The Myth That Will Not Die*, Time, Oct. 29, 2010, <http://healthland.time.com/2010/10/29/marijuana-as-a-gateway-drug-the-myth-that-will-not-die/>

¹⁷⁴ Id.

¹⁷⁵ Sarah Zhang, *Patients Are Ditching Opioid Pills for Weed, Can marijuana help solve the opioid epidemic?*, The Atlantic, Feb 02, 2017, <https://www.theatlantic.com/health/archive/2017/02/marijuana-cannabinoids-opioids/515358/>

¹⁷⁶ Spencer Buell, *Jeff Sessions: Marijuana Is "Only Slightly Less Awful" Than Heroin*, Boston Daily, March 15, 2017, <http://www.bostonmagazine.com/news/blog/2017/03/15/jeff-sessions-marijuana-slightly-less-awful-heroin/>

Statements made by Attorney General Jeff Sessions downplays contemporary findings of marijuana and the benefit it may have in reducing opioid addiction.¹⁷⁷ Researchers have found that states with medical marijuana laws had a 25 percent lower average annual opioid overdose death rate than other states.¹⁷⁸ The opioid epidemic has roots in the prescription drug market and is well within reach of schools, nursing homes, inner cities, and suburbia.¹⁷⁹ Where abuse or prescribed opioids have led to the increased heroin use.¹⁸⁰ A study done in 2008 and 2009, found that 86 percent of heroin users had used opioid pain relievers non-medically prior to using heroin.¹⁸¹ Their initiation into nonmedical use came from three main sources family, friends, or personal prescriptions.¹⁸²

As an alternative to prescribing opioid-based pain relievers, James Feeney, a surgeon in Connecticut has looked to marijuana.¹⁸³ His patients, Feeney recalls, would say:

Listen, don't give me any of that oxycodone garbage. ... I'm just going to smoke weed.¹⁸⁴

Marijuana has worked well enough, anecdotally at least, that Feeney is following his patients' lead and conducting a trial at Saint Francis Hospital and Medical Center in Hartford, Connecticut.¹⁸⁵ Feeney's big focus from his standpoint is that this is an attempt to end the opioid epidemic.¹⁸⁶ The United States has 5% of the world's population but consumes 75% of its prescription drugs.¹⁸⁷

Every day, at least 44 people in America die of painkiller overdoses, and an additional 7,000 end up in emergency rooms.¹⁸⁸ In the last decade, 11 of the largest drug corporations made \$711 billion; in 2013 drug companies spent nearly \$226 million and marshaled more than 1,400 lobbyists to influence Congress.¹⁸⁹ Filmmaker Chris Bell, of the documentary "Prescription Thugs", became addicted to painkillers after hip replacement surgery.¹⁹⁰ He later shifted to alcohol and Xanax.¹⁹¹ He shared his personal account with opioid addiction:

¹⁷⁷ German Lopez, *One way to fight the opioid epidemic? Medical marijuana An innovative, but evidence-based idea*, Vox, Jan 18, 2017, <http://www.vox.com/2016/1/20/10800248/medical-marijuana-opioids-heroin>.

¹⁷⁸ Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 214 (2016)

¹⁷⁹ Jeffrey Fleishman, *For 'Prescription Thugs' filmmaker, drug abuse hit close to home*, Jan 22, 2016, <http://www.latimes.com/entertainment/movies/la-et-mn-prescription-thugs-movie-feature-chris-bell-20160122-story.html>

¹⁸⁰ Id.

¹⁸¹ *Prescription opioid use is a risk factor for heroin use*, Dec 2015, <https://www.drugabuse.gov/publications/research-reports/relationship-between-prescription-drug-heroin-abuse/prescription-opioid-use-risk-factor-heroin-use>

¹⁸² Id.

¹⁸³ Sarah Zhang, *Patients Are Ditching Opioid Pills for Weed, Can marijuana help solve the opioid epidemic?*, The Atlantic, Feb 02, 2017, <https://www.theatlantic.com/health/archive/2017/02/marijuana-cannabinoids-opioids/515358/>

¹⁸⁴ Id.

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ Jeffrey Fleishman, *For 'Prescription Thugs' filmmaker, drug abuse hit close to home*, LA Times, Jan 22, 2016, <http://www.latimes.com/entertainment/movies/la-et-mn-prescription-thugs-movie-feature-chris-bell-20160122-story.html>

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Id.

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You get addicted so quick...You don't even see it happening. One day you take two pills every four hours, and the next day you have to take it. Over the course of a month, you become addicted. It just snowballs.¹⁹²

Doctors are often unaware of the effects of opiates, became complicit with Big Pharma.¹⁹³ Gwen Olsen, a former pharmaceutical representative came to the realization that:

I wasn't getting the full picture...The information was being presented to me through rose-colored glasses so that I would present it to physicians through rose-colored glasses. I was being encouraged to misinform people, and if I was misinforming doctors that meant doctors were misinforming patients.¹⁹⁴

In response to Attorney General Jeff Session's comments, Alaska Gov. Bill Walker, Colorado Gov. John Hickenlooper, Oregon Gov. Kate Brown and Washington Gov. Jay Inslee, signed a letter that implores the Trump administration to continue the policy set by the 2013 Justice Department (DOJ) memo allowing state marijuana laws to go into effect without federal intervention.¹⁹⁵ As more states lean toward a softer stance on marijuana, an informed public is vital to this discussion. It seems that the antiquated notion of the stepping stone/gateway theory seems more fitting for prescription opioids rather than marijuana.¹⁹⁶ Yet, preconceived notions of marijuana in the general sense seems to persist.

C. The Evolution of Gun Rights

With the current trend of marijuana legalization across the states (medical/recreational), what does that mean for other rights such as the right to bear arms? Should marijuana users be allowed to own firearms? Before the Supreme Court had interpreted the meaning of the Second Amendment as an individual right, Congress had to regulate firearms through legislative acts.¹⁹⁷ One of such legislative acts is called the Gun Control Act of 1968 (GCA).¹⁹⁸ The GCA was designed to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence.¹⁹⁹ Later in 2008, the Supreme Court held in *District of Columbia v. Heller*, that the Second Amendment guaranteed an individual right to bear arms (and *McDonald v. City of Chicago* in 2010 which made it applicable to all states).²⁰⁰ This is long after state legal marijuana use came into existence.²⁰¹ Which means that when Congress created the GCA, individual gun ownership was not a

¹⁹² Id.

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ Mollie Reilly, *Governors To Trump Administration: Stay Away From Our Marijuana Laws*, Huffington Post, April 03, 2017, http://www.huffingtonpost.com/entry/governors-marijuana-laws_sessions_us_58e2cb39e4b0f4a923b1329d

¹⁹⁶ Desirae Hoover, *Legal Painkillers Are The Real Gateway Drugs, Not Marijuana*, Huffington Post, Oct. 06, 2016, http://www.huffingtonpost.com/desirae-hoover/legal-painkillers-are-the_b_12343306.html

¹⁹⁷ Nash E. Gilmore, *A Bridge Over Troubled Water: The Second Amendment Guarantee for the Previously Mentally Institutionalized*, 86 Miss. L.J. Supra 1, 13 (2017)

¹⁹⁸ Id. at 13

¹⁹⁹ Id.

²⁰⁰ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 5 (2016).

²⁰¹ Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 9 (2017)

constitutional right. In addition, marijuana was widely believed to be dangerous during that time.²⁰² The GCA limits a person's right to possess a gun if they are an unlawful drug user (marijuana). However, after *Heller* and *McDonald* were decided, the constitutionality of those statutory provisions and the legislative history should be considered as well. In the evaluation of Second Amendment challenges, many courts have adopted a two-step framework.²⁰³ There are variations in how the two-step framework is applied in different circuits.²⁰⁴ Under the current trend of cases, users of Marijuana are deprived of the Second Amendment right to bear arms.

I. Relief-From-Disabilities Program and Gun Control Act of 1968

Prior to the decision in *Heller*, Congress had to regulate firearms through legislative acts.²⁰⁵ One of them is the Gun Control Act of 1968 (GCA), which established the current prohibitions.²⁰⁶ Prior to the GCA, in 1965 Congress established a federal relief-from-disabilities program to restore the rights for those suffering from a prohibition.²⁰⁷ However, because of budgetary concerns, this relief program was federally defunded and an optional state program was enacted.²⁰⁸ This left many without any relief.²⁰⁹ Due to this, a person who has been found to have lost their rights to bear arms for being an unlawful users of drugs in court, would likely not gain that right back.²¹⁰

The federal relief-from-disabilities program, codified as 18 U.S.C. § 925(c), was established in 1965.²¹¹ Under this program, those prohibited from possessing a firearm could apply to the Director of the Bureau of Alcohol, Tobacco, and Firearms (ATF) and reestablish their right to possess firearms.²¹² The ATF would only grant relief if the applicant would not be likely to act in a manner dangerous to public safety and the public interest.²¹³ If a person is denied relief, they could petition a federal court for judicial review.²¹⁴ However, this program was defunded in 1992.²¹⁵ This defunding caused the prohibited persons to suffer a permanent ban on gun ownership.²¹⁶

²⁰² Id. at 2; Austin Sarat & Malcolm Feeley, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration, 1968-1978*, 35 (1980)

²⁰³ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 12 (2016)

²⁰⁴ Id.

²⁰⁵ Nash E. Gilmore, *A Bridge Over Troubled Water: The Second Amendment Guarantee for the Previously Mentally Institutionalized*, 86 Miss. L.J. Supra 1, 13 (2017)

²⁰⁶ Id.

²⁰⁷ Id.

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ See id. at 16

²¹¹ Id. at 15

²¹² Id.

²¹³ Id. at 16

²¹⁴ Id.

²¹⁵ Id.

²¹⁶ Id.

While Congress did not repeal § 925(c), Congress denied the ATF funding to process § 925(c) applications, making it practically impossible for anyone to seek relief.²¹⁷ This caused a once regulatory presumptive ban on dangerous persons, to become an actual permanent prohibition.²¹⁸ In the wake of the Virginia Tech shooting, Congress saw the need to improve the National Instant Check System (NICS) and enacted the NICS Improvement Amendments Act of 2007 (NIAA), which authorized federal grants to assist states in submitting more accurate and reliable records.²¹⁹ Eligible for these grants, required states to implement a relief-from-disabilities program.²²⁰ Under these state-led relief programs, anyone who pursuant to state law was found to be adjudicated as *mental defective* or had been committed to a *mental institution* could apply for relief.²²¹ Which is narrower than § 925(c).

The Gun Control Act of 1968 (GCA), was designed to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence.²²² GCA's purpose was to curb crime by keeping firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.²²³ GCA expanded the list of categories of dangerous persons prohibited from purchasing firearms to include those who were *unlawful users of illegal narcotics*.²²⁴

II. Gun Ownership is a Fundamental Right: *Heller* and *McDonald*

The interpretation that the Second Amendment guarantees an individual right to bear arms was held on 2008 (*District of Columbia v. Heller* and *McDonald v. City of Chicago* in 2010 which made it applicable to all states), long after state legal marijuana use came into existence.²²⁵ The first state to amend its drug laws for the medical use of marijuana was in California in 1996.²²⁶ After the Supreme Court decided *District of Columbia v. Heller* and *McDonald v. City of Chicago*, it brought nationwide challenges on Second Amendment grounds because the Supreme Court did not define the full scope of the right protected by the Second Amendment.²²⁷ This left the question of whether marijuana users fall within the scope protected by the Second Amendment.

In *Parker v. District of Columbia*, the appeals court rejected the D.C. Circuits collective right theory, where the right to bear arms is in conjunction with service in the militia.²²⁸ Instead the appeals

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Id. at 17

²²⁰ Id.

²²¹ Id.

²²² Id. at 13

²²³ Id. at 14

²²⁴ Id.

²²⁵ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 5 (2016); Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 9 (2017)

²²⁶ Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 9 (2017)

²²⁷ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 12 (2016)

²²⁸ Id. at 4

court held that the right to bear arms was an individual right, which was advanced by the plaintiffs.²²⁹ The plaintiffs argued that the operative clause in the Amendment is, “the right of the people to keep and bear Arms shall not be infringed” which signals an individual right.²³⁰ In *District of Columbia v. Heller*, the Supreme Court affirmed the appeals court’s conclusion that the Second Amendment guarantees an individual right to possess firearms for historically lawful purposes, such as self-defense in the home.²³¹ By doing so, the majority interpreted its meaning as a fundamental right.²³² It enshrined the right of handgun ownership for the use of self-defense in the home.²³³ The majority arrived at this conclusion after undertaking an extensive analysis of the founding-era meaning of the words in the Second Amendment’s prefatory and operative clauses.²³⁴ Applying that interpretation to the challenged D.C. firearm laws, the Court concluded that the District’s functional ban on handgun possession in the home and the requirement that lawful firearms in the home be rendered inoperable were unconstitutional.²³⁵ This right, however, is not an absolute right. The restrictions follow longstanding prohibitions on the possession of firearms by felons, the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing imposes conditions and qualifications on the commercial sale of firearms.²³⁶ It also prohibits dangerous and unusual weapons.²³⁷

In *McDonald v. City of Chicago*, through the 14th Amendment, the Supreme Court made *Heller* applicable to state and local government as well.²³⁸ However, in both *Heller* and *McDonald*, the Supreme Court did not define the full scope of that right, thereby leaving lower courts to fill in the gaps. Because the list in *Heller* was not meant to be exhaustive, and the Court did not elaborate further.²³⁹ It has been dubbed *Heller’s* “safe harbor,” intimating that restrictions similar to those listed would be found constitutional.²⁴⁰ The main take away from *Heller* is, the Second Amendment protects the right of law-abiding citizens to possess weapons for lawful purposes, notably, self-defense in the home.²⁴¹

III. Post-Heller Conflict: Gun Control Act 1968 v. Marijuana

When the Congressional statutes created in the 1960’s are read together, they limit a person’s right to possess a gun if they are an unlawful drug user (marijuana). But when *Heller* and *McDonald* were decided, the constitutionality of those statutory provisions and the legislative history should be considered as well.

229 Id.

230 Id.

231 Id. at 1

232 *District of Columbia v. Heller*, 128 S. Ct. 2783, 2822 (U.S. 2008)

233 Id.

234 Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 5 (2016)

235 Id.

236 *District of Columbia v. Heller*, 128 S. Ct. 2783, 2817 (U.S. 2008)

237 Id.

238 Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 10 (2016)

239 Id. at 13

240 Id.

241 Id. at 12

In the Gun Control Act, 18 U.S.C. § 922 (d)(3), it states that: It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is an unlawful user of or addicted to any *controlled substance* (Controlled Substances Act, 21 U.S.C. § 802).²⁴²

21 U.S.C. § 802(6) defines “controlled substance” to mean a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V. The term does not include distilled spirits, wine, malt beverages, or tobacco.²⁴³

Although, the Gun Control Act of 1968 does not defines the term “drug user or addict” for purposes of firearms ineligibility.²⁴⁴ It did reference the Controlled Substance Act for the definition of *controlled substance*. Under 21 U.S.C. § 802(1), “*addict*” means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.²⁴⁵ Which was how it was interpreted in *United States v. Grover*.²⁴⁶

How is an FFL supposed to determine if an individual is a drug user?²⁴⁷ By conducting a drug test?²⁴⁸ To complicate matters, criminals rarely purchase guns from FFLs, so more stringent regulation of licensed retail sellers would have little, if any, impact.²⁴⁹

IV. Post-Heller: Marijuana Jurisprudence

Most Second Amendment challenges come from the Gun Control Act of 1968 (GCA).²⁵⁰ Which places limitations on the commercial sale and possession of firearms in interstate commerce.²⁵¹ In the evaluation of Second Amendment challenges, many courts have adopted a two-step framework.²⁵² There are variations in how the two-step framework is applied in different circuits, in the 9th Circuit, *United States v. Chovan* is one of the cases in which the two-step framework was applied to (domestic violence case).²⁵³ *Chovan* illustrates how the two-step framework is applied in the 9th Circuit. However, the 9th Circuit finds that Second Amendment claims does not fall within the direct scope for unlawful drug users, shown in *United States v. Dugan*.²⁵⁴ The 4th Circuit took a different approach, shown in *United States v. Carter*, where the court required the government to put forth

242 18 U.S.C.A § 922 (d)(3) (West 2017)

243 21 U.S.C.A § 802(6) (West 2016)

244 James B. Jacobs, *Can Gun Control Work?*, 107 (2002)

245 21 U.S.C.A. § 802(1) (West 2016)

246 *United States v. Grover*, 364 F. Supp. 2d 1298, (D. Utah 2005)

247 *Id.*

248 *Id.*

249 *Id.* at 216

250 Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 17 (2016)

251 *Id.*

252 *Id.* at 12

253 *Id.*

254 *Wilson v. Lynch*, 835 F.3d 1083, 1091 (9th Cir. 2016)

evidence demonstrating a reasonable connection between the GCA (Section 922(g)(3)) and an important governmental interest.²⁵⁵

Daniel Chovan was convicted in California for the misdemeanor of inflicting corporal injury on a spouse.²⁵⁶ Because of this conviction, Chovan was prohibited from possessing firearms under both state and federal law.²⁵⁷ Chovan was barred from possessing any firearms for life under federal statute (GCA) 18 U.S.C. § 922(g)(9).²⁵⁸ The first step in the framework inquires whether the regulated person, firearm, or place fall within the scope of the Second Amendment's protections.²⁵⁹ In *Chovan*, the court decided that since domestic violence misdemeanants were not restricted from possessing firearms until 1996, it lacked historical evidence.²⁶⁰ The *Chovan* court therefore assumed that Chovan's rights were intact and he was entitled to some measure of Second Amendment protection.²⁶¹

If it falls within scope, the courts move to step two and determine the appropriate level of judicial scrutiny (rational basis, intermediate, or strict scrutiny) to determine whether the law is constitutional or not.²⁶² In assessing what level of scrutiny is warranted, the court has to figure out in what way does the challenged law burdens core Second Amendment conduct, like the ability to use a firearm for self-defense in the home.²⁶³ If a law substantially burdens core Second Amendment activity, courts typically will apply strict scrutiny.²⁶⁴ Otherwise, courts generally will apply intermediate scrutiny.²⁶⁵ In most cases, courts have reviewed Second Amendment challenges under intermediate scrutiny.²⁶⁶

In *Chovan*, the court held that intermediate scrutiny is applicable.²⁶⁷ Because although § 922(g)(9) amounted to a lifetime ban, the burden is lightened from exceptions for those who have been expunged, pardoned, or has set-aside convictions, or those who have had their civil rights restored.²⁶⁸ Therefore the burden under § 922(g)(9) is lightened by those exceptions.²⁶⁹ And intermediate scrutiny is applicable because it does not implicate the core Second Amendment right.²⁷⁰

255 Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 22 (2016)

256 United States v. Chovan, 735 F.3d 1127, 1129 (9th Cir. 2013)

257 Id.

258 Id.

259 Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 12 (2016)

260 United States v. Chovan, 735 F.3d 1127, 1137 (9th Cir. 2013)

261 Id.

262 Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 12 (2016)

263 Id.

264 Id.

265 Id.

266 Id.

267 United States v. Chovan, 735 F.3d 1127, 1138 (9th Cir. 2013)

268 Id.

269 Id.

270 Id.

Intermediate scrutiny asks whether: (1) the regulation furthers a substantial or important governmental interest; (2) there is a reasonable or substantial fit between the asserted interest and the challenged law; and (3) the restriction is no greater than necessary to further that interest. The fit needs to be reasonable but, a perfect fit is not required.²⁷¹ Usually, the viability of a firearm restriction depends on what evidence the government puts forth to justify the law.²⁷²

The *Chovan* court held that Chovan failed in his challenge to pass intermediate scrutiny because: (1) keeping firearms away from those most likely to misuse them or preventing gun violence, is an important government objective.²⁷³ (2) Keeping guns from domestic violence misdemeanants is substantially related to the broader interest of preventing domestic gun violence.²⁷⁴ (3) Although Chovan had not been arrested since his 1996 conviction and has been a law-abiding citizen since, his argument still fails.²⁷⁵ If Congress wanted to create a law to restrict only recent domestic violence convictions, they could have but Congress did not do so.²⁷⁶

Under the Gun Control Act of 1968, 18 U.S.C. § 922(g)(3), criminalizes the possession of firearms by persons who unlawfully use or are addicted to any controlled substance, it has been upheld as constitutional by several circuit courts, including the Ninth Circuit.²⁷⁷ In *United States v. Dugan*, the Ninth Circuit reasoned that habitual drug users, like felons and the mentally ill are “more likely will have difficulty exercising self-control, particularly when they are under the influence of a controlled substances.”²⁷⁸ *Dugan* failed at step one, because the court reasoned that it was analogues to the longstanding prohibitions on felons and the mentally ill.²⁷⁹ (*United States v. Dugan* did not use the full two-step framework shown in *United States v. Chovan*, which is important for background later in *Wilson v. Lynch*, which is also a 9th Circuit decision.)

The Fourth Circuit took a different approach, they required the government to put forth evidence demonstrating a reasonable connection between Section 922(g)(3) and an important governmental interest.²⁸⁰ In *United States v. Carter*, the Fourth Circuit initially vacated the conviction of a person convicted under Section 922(g)(3) for possessing a firearm while unlawfully using marijuana, the court remanded the case back to the district court for the parties to develop the record and make arguments as to whether the conviction withstood intermediate scrutiny.²⁸¹ In evaluating the defendant’s argument, the circuit court assumed without deciding that the defendant maintains Second Amendment protection notwithstanding his drug use.²⁸² And the court found that the

²⁷¹ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 15 (2016)

²⁷² Id. at 12

²⁷³ *United States v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013)

²⁷⁴ Id.

²⁷⁵ Id. at 1141

²⁷⁶ Id.

²⁷⁷ Sarah S. Herman, *Post-Heller Second Amendment Jurisprudence*, Congressional Research Service, 22 (2016)

²⁷⁸ Id.

²⁷⁹ Id.

²⁸⁰ Id.

²⁸¹ Id.

²⁸² Id.

government had not demonstrated a connection between drug use and violence on record.²⁸³ Therefore the government had not shown a reasonable fit between Section 922(g)(3) and its goal of keeping guns out of the hands of irresponsible and dangerous persons.²⁸⁴

Unlike in other cases, the government had not provided any studies, empirical data, or legislative findings to support the restriction.²⁸⁵ Instead, the government argued that “the fit was a matter of common sense.”²⁸⁶ However, the court noted that the government’s burden on remand “should not be difficult to satisfy,” given that evidence of the danger of mixing drugs and guns was in the court’s view, “abundantly available.”²⁸⁷ And on remand, the government, indeed presented numerous studies showing a correlation between violent crime and drug use (in contrast to *only* marijuana use *see infra Carter*), which the Fourth Circuit ultimately found to substantiate the government’s contention that “disarming drug users reasonably serves the important governmental interest of protecting the community from gun violence.”²⁸⁸

Marijuana is currently listed as a Schedule I controlled substance under the Controlled Substance Act. The question of the fundamental right of gun ownership never presented itself until *Heller*.²⁸⁹ Post-*Heller*, the question of whether gun ownership rights should extend to marijuana users or not presents an interesting legal question. Although people reference marijuana prohibition as being analogous the Alcohol Prohibition, people during the time of prohibition did not yet have the fundamental right to own firearms. However, the aspect of violence associated with illicit drugs is analogous and reflective of an unregulated illicit market. Which resulted in the National Firearms Act of 1934, due to the violent and bloody gang wars of that era.²⁹⁰ In the 1920s and '30s, the U.S. was dealing with a massive increase in organized crime, fueled by Prohibition.²⁹¹ Gangsters, like Al Capone, were making big money trafficking illegal alcohol.²⁹² If marijuana users today are found to have the right to bear arms, the same restrictions will still apply.²⁹³

a. Wilson v. Holder: Pre - 9th Circuit Court of Appeals (Wilson v. Lynch)

Under the current trend of cases, users of Marijuana are deprived of the Second Amendment right to bear arms. How the determination of whether marijuana users should or should not have the right to bear arms were handled differently in each circuit. In addition to this, in deciding a case, the courts has looked towards precedence. In *Wilson v. Lynch* and in the appeal, the court relied on several prior rulings in other circuit cases as precedent for S. Rowan Wilson. In *Wilson v. Lynch*, Wilson applied for and obtained a state marijuana registry card in Nevada by doctor recommendation

283 Id.

284 Id. at 23

285 Id.

286 Id.

287 Id.

288 Id.

289 *District of Columbia v. Heller*, 128 S. Ct. 2783, 2816 (U.S. 2008)

290 Joseph B. Adams, *Dispensing with the Second Amendment*, 12 *Trinity L. Rev.* 75, 82 (2004)

291 *Prohibition-Era Gang Violence Spurred Congress To Pass First Gun Law*, NPR, June 30, 2016, <http://www.npr.org/2016/06/30/484215890/prohibition-era-gang-violence-spurred-congress-to-pass-first-gun-law>

292 Id.

293 See Id.

due to her struggle with severe dysmenorrhea.²⁹⁴ She also subsequently applied to purchase a firearm at a gun store in Mound House, Nevada.²⁹⁵ However, the store's proprietor prevented her from completing her application because he knew she carried a state marijuana registry card.²⁹⁶

Ms. Wilson filed a lawsuit challenging the constitutionality of the two provisions of the Gun Control Act that effectively criminalize the sale and possession of a firearm by the holder of a registry card: 18 U.S.C. §§ 922(d)(3) and (g)(3).²⁹⁷ Ms. Wilson also challenges the constitutionality of one of the accompanying regulations, 27 C.F.R. § 478.11, that defines the term "unlawful user of or addicted to any controlled substance" as used in § 922(d)(3) and (g)(3).²⁹⁸ Finally, Ms. Wilson also challenged the ATF Open Letter that federal firearms licensees may not sell a firearm to persons they know are "in possession of a card authorizing the possession and use of marijuana under State law".²⁹⁹ Ms. Wilson claimed her Second Amendment right to "keep and bear Arms", her First Amendment right to free speech, substantive due process, procedural due process and equal protection as secured by the Fifth Amendment were violated.³⁰⁰ The District Court found that Ms. Wilson's Second Amendment rights were not violated because those rights were not unlimited.³⁰¹

i. United States v. Dugan

The *Wilson v. Holder* (district court case for *Wilson v. Lynch*) court relied on *United States v. Dugan*, in regards to the decision of the constitutionality of 18 U.S.C. §922(g)(3).³⁰² Where by "any person who is a unlawful user of or addicted to any controlled substance...possess in or affecting commerce, any firearm or ammunition; or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce"³⁰³ In the closing, the *Dugan* court stated that habitual drug users, like career criminals and the mentally ill, more likely will have difficulty exercising self-control, particularly when they are under the influence of controlled substances.³⁰⁴

However, the *Dugan* court seems to tease the idea that if marijuana becomes *legal* on the federal level, gun possession by marijuana users could be allowed.³⁰⁵ The *Dugan* court reasons that, unlike people who have been convicted of a felony or committed to a mental institution and so face a lifetime ban, an unlawful drug user may regain his right to possess a firearm simply by ending his

294 *Wilson v. Holder*, 7 F. Supp. 3d 1104, 1110 (D. Nev. 2014)

295 *Id.*

296 *Id.*

297 *Id.*

298 *Id.*

299 *Id.*

300 *Id.*

301 *Id.* at 1116

302 *United States v. Dugan*, 657 F.3d 998, 999 (9th Cir. 2011)

303 *Id.*

304 *Id.*

305 *Id.*

drug abuse.³⁰⁶ The restriction in § 922(g)(3) is far less onerous than those affecting felons and the mentally ill, we conclude that Congress may prohibit *illegal* drug users from possession firearms.³⁰⁷

b. Appeal to the 9th Circuit: *Wilson v. Lynch*

Ms. Wilson later appealed to the 9th Circuit Court but, the 9th Circuit affirmed the district court's decision.³⁰⁸ Although the 9th Circuit held that 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter issued by the ATF, prevented Ms. Wilson from purchasing a firearm, thereby directly burdening her core Second Amendment right to possess a firearm.³⁰⁹ *Dugan* was not applicable to Ms. Wilson because she is not an *unlawful* (defined under federal law) drug user.³¹⁰ Rather, she contended that she applied for the medical marijuana card as a form of political statement.³¹¹

As such, the court relied on *United States v. Chovan* in the application of the two-step framework.³¹² First step, does the challenged law burden conduct protected by the Second Amendment, based on historical understanding of the scope, or whether the challenged law falls within a well-defined and narrowly limited category of prohibitions that have been historically protected.³¹³ With respects to Wilson, because she insist that she is not an *unlawful* drug user (*Dugan*), a convicted felon, or a mentally-ill person, she is not a person historically prohibited from possessing firearms under the Second Amendment.³¹⁴ Therefore preventing Ms. Wilson from purchasing a firearm directly burdened her core Second Amendment rights.³¹⁵

Second step, which level of scrutiny applies depends on (1) how close the law comes to the core of the Second Amendment right and (2) the severity of the law's burden on the right.³¹⁶ Application of the first prong is guided by *Heller's* "core lawful purpose of self-defense" and that 'whatever else it leaves to future evaluation, [the Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'³¹⁷ Here, 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter burden the core of Wilson's Second Amendment right because they prevent her from purchasing a firearm under certain circumstances and thereby impede her right to use arms to defend her "hearth and home."³¹⁸ With respect to the second prong of the second *Chovan* step:

laws which regulate only the manner in which persons may exercise their Second Amendment rights are less burdensome than those which bar firearm possession completely. Similarly,

³⁰⁶ *United States v. Dugan*, 657 F.3d 998, 999(9th Cir. 2011)

³⁰⁷ *Id.*

³⁰⁸ *Wilson v. Lynch*, 835 F.3d 1083, 1100 (9th Cir. 2016)

³⁰⁹ *Id.*

³¹⁰ *Id.* at 1091

³¹¹ *Id.*

³¹² *Id.* at 1092

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

firearm regulations which leave open alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not.³¹⁹

The court applied intermediate scrutiny and found that the fit between the challenged provisions and the Government's substantial interest of violence prevention was reasonable.³²⁰ The court also reasoned that Wilson may purchase firearms before acquiring or after surrendering a registry card.³²¹ Thereby demonstrating that she is not an unlawful drug user, because by having a marijuana card it is safe to assume that the card holder is more likely than not to be marijuana users.³²²

The court stated that, Congress enacted 18 U.S.C. § 922(g)(3), which bars unlawful drug users from possessing firearms, "to keep firearms out of the hands of presumptively risky people."³²³ The court reasoned that, is beyond dispute that illegal drug users, including marijuana users, are likely as a consequence of that use to experience altered or impaired mental states that affect their judgment and that can lead to irrational or unpredictable behavior (*Carter* infra).³²⁴ They are also more likely to have negative interactions with law enforcement officers because they engage in criminal activity.³²⁵ Finally, they frequently make their purchases through black market sources who themselves frequently resort to violence.³²⁶

The *Wilson* court further stated that, it may be argued that medical marijuana users are less likely to commit violent crimes, as they often suffer from debilitating illnesses, for which marijuana may be an effective palliative.³²⁷ They also may be less likely than other illegal drug users to interact with law enforcement officers or make purchases through illicit channels.³²⁸ But those hypotheses are not sufficient to overcome Congress's reasonable conclusion that the use of such drugs raises the risk of irrational or unpredictable behavior with which gun use should not be associated.³²⁹ In determining whether or not marijuana is associated with violence, the 9th Circuit relied on two prior court cases *United States v. Carter* and *United States v. Yancey*³³⁰:

i. United States v. Carter

The *Carter* case initially went to the 4th Circuit Court of Appeals, where it got remanded back to the district court. Later the district court found in favor of the government, and Carter appealed again to the 4th Circuit. The *Carter* court reasoned that, when disarming drug users and addicts through [§ 922\(g\)\(3\)](#), there has to be a reasonable fit between the important goal of reducing gun violence and

319 Id.

320 Id. at 1100

321 Id. at 1093; 1097

322 Id. at 1093; 1097

323 Id. at 1094

324 Id.

325 Id.

326 Id.

327 Id.

328 Id.

329 Id.

330 Id.

the prohibition in § 922(g)(3).³³¹ The government could resort to a wide range of sources, such as legislative text and history, empirical evidence, case law, and common sense, as circumstances and context required.³³² The court found that, while the government had made plausible commonsense arguments about the risks of mixing drugs and guns, it had presented no empirical evidence or data to substantiate them.³³³ The court then remanded the case to the district court to allow the government to develop a record sufficient to justify its argument.³³⁴ That drug users and addicts possessing firearms are sufficiently dangerous to require disarming them.³³⁵

The government was required to show that the fit between § 922(g)(3) and the government's important goal is reasonable, not perfect.³³⁶ Moreover, its burden in this case was lower than in other § 922(g) Second Amendment cases because of § 922(g)(3)'s limited temporal reach the fact that § 922(g)(3)'s prohibition lasts only as long as the individual remains an unlawful drug user or addict.³³⁷ After considering the evidence, the court concluded that the government had met its burden.³³⁸ That the data indicated a correlation between violent crime and drug use.³³⁹ Although the government's studies did not prove a strict causal nexus between drug usage and violence, it found that the two factors frequently coincide.³⁴⁰ In addition, it pointed to *common-sense notions* that supported the fit between drug users and violence, noting³⁴¹:

- (1) that drug users are more likely to encounter law enforcement;
- (2) that their criminal associations increase the risk of violence;
- (3) that the high price of drugs is likely to lead to violent property crimes; and
- (4) that drug use impairs judgment.

Standing alone, the government's common sense arguments is insufficient to justify § 922(g)(3), but does not imply that legislative text and history, case law, and common sense could play no role in justifying Congress's enactment.³⁴² The government's common sense arguments, in this case, were plausible and therefore supported § 922(g)(3)'s constitutionality, observing that the government's remaining burden should not be difficult to satisfy.³⁴³ Carter argued that the government

331 ¹United States v. Carter, 750 F.3d 462, 465 (4th Cir. 2014)

332 Id.

333 Id.

334 Id.

335 Id.

336 Id. at 466

337 Id.

338 Id. at 465

339 Id.

340 Id.

341 Id.

342 Id. at 466

343 Id.

evidence offered against him was general categories of offenders, including those who abuse a range of controlled substances.³⁴⁴ It does not indicate that *marijuana* users are prone to violence.³⁴⁵

The court found that the evidence that Carter offered to refute the link between marijuana use and violence, actually provides additional evidence that marijuana use and violence coincide.³⁴⁶ When the study controlled for “risk factors,” the correlation between marijuana use in adolescence and violence in young adulthood was not statistically significant.³⁴⁷ However, the study *still* found that adolescents who used marijuana were almost *twice* as likely to engage in violence when they became young adults.³⁴⁸

Carter also objects to the government's evidence on the grounds that it demonstrated, at most, a *correlation* between marijuana use and violence, not a *causal* relationship.³⁴⁹ However, Congress may regulate based on correlational evidence.³⁵⁰ There is no requirement that the government needs to prove a causal link between drug use and violence when determining whether there is a reasonable fit between § 922(g)(3) and an important government objective.³⁵¹ While it does not prove that marijuana use causes violence, it substantially bolsters the link and helps to justify regulating gun possession by marijuana users.³⁵² Under intermediate scrutiny, the fit between the regulation and the harm need *only* be reasonable, not perfect.³⁵³

ii. United States v. Yancey

The *Yancey* court reasoned, that keeping firearms out of the hands of a habitual drug abuser, who has lost the power of self-control (with reference to the use of controlled substance, 27 C.F.R. § 478.11) and whose possession of a firearm likewise poses substantial health and safety hazards is constitutional.³⁵⁴ An interesting question arises if recreational marijuana use becomes legal on the federal level. It would make sense that, in regards to medical marijuana, there would be a pattern associated with marijuana intake to treat a medical condition and hence a habitual drug abuser. However, under 27 C.F.R. § 478.11, controlled substance includes...marijuana, depressants, stimulants, and narcotic drugs.³⁵⁵ The term does not include distilled spirits, wine, malt beverages, or tobacco. An interpretation of the statute seems to categorize controlled substance as an illicit drug.³⁵⁶ Would the legalization of marijuana lead to the rightful position of firearms to users of marijuana?

344 Id.

345 Id. at 467

346 Id. at 468

347 Id.

348 Id.

349 Id. at 469

350 Id.

351 Id.

352 Id.

353 Id.

354 *United States v. Yancey*, 621 F.3d 681, 686 (7th Cir. 2010)

355 27 C.F.R. § 478.11 (West May 25, 2017)

356 Id.

c. The Road to the Supreme Court?

On January 27, 2017, Ms. Wilson submitted a brief to the Supreme Court for a petition for writ of certiorari. Her challenge is that her Second Amendment fundamental right was infringed and taken away from her, not “modestly” or collaterally or minimally or incidentally, but rather at its essence.³⁵⁷ Because the Ninth Circuit denied her Second Amendment constitution right grounded upon suspicion that Petitioner was an unlawful drug user in the basis of the Open Letter, when in fact, as alleged in her Amended Complaint, she was not a marijuana user.³⁵⁸ Even though the Ninth Circuit correctly found that she was not an unlawful user of marijuana, it upheld the denial of her attempt to purchase a handgun, based solely on the Open Letter, stating the Government has a reasonable cause to believe that she was an unlawful user of a controlled substance based solely on her acquisition of a medical marijuana Registry Card.³⁵⁹ The Ninth Circuit found that this presumption and speculation trumped truth and reality because she was not in fact an unlawful user of a controlled substance.³⁶⁰ This is not “evidence” sufficient to deny her Second Amendment right.³⁶¹

The ruling in *Wilson v. Lynch* affects the western states such as Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.³⁶² Of these states, Idaho is the only state that doesn't allow medical marijuana.³⁶³ States such as Alaska, California, Nevada, Oregon and Washington also allows for the recreational use of marijuana.³⁶⁴

D. Other Factors Associated With Marijuana: Other Drugs, Alcohol, Before and After Regulations, and the Illicit Drug Trade

Many factors of marijuana and its perceived danger has been disproven. Attitudes towards marijuana should shift in accordance with facts, rather than preconceived notions. With this shift, federal statutes which regulate marijuana should change. With this change, marijuana users should be allowed to own guns or at least not be restricted on the sole premise of marijuana use alone.

There are many distinct chemicals in the marijuana plant, which are shown in studies to have medical benefits.³⁶⁵ Marijuana is also not pharmacologically capable of causing a fatal overdose.³⁶⁶ Comparing the lethality of the recreational use of 10 common drugs, including alcohol and tobacco, marijuana has the lowest risk of mortality and is safer than all of them.³⁶⁷

³⁵⁷ Brief of Petitioner at 5, *Wilson v. Boente*, (2017)(No. 16-951)

³⁵⁸ Id. at 20

³⁵⁹ Id. at 24

³⁶⁰ Id.

³⁶¹ Id. at 23

³⁶² http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000135

³⁶³ <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>

³⁶⁴ Melia Robinson, It's 2017: Here's where you can legally smoke weed now, *Business Insider*, Jan. 8, 2017, <http://www.businessinsider.com/where-can-you-legally-smoke-weed-2017-1>

³⁶⁵ Steve Fox , Paul Armentano, Mason Tvert, Marijuana is Safer: So Why Are We Driving People to Drink?, 19 (2013); Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, Marijuana Legalization What Everyone Needs to Know, 8 (2016)

³⁶⁶ Id.

³⁶⁷ Id.

Alcohol, more than any illegal drug, has been found to be closely associated with violent crimes, including murder, rape, assault, child and spousal abuse.³⁶⁸ However on the other hand, cannabis was not associated with an increased likelihood of physical aggression.³⁶⁹ Yet, alcohol users are free to purchase firearms with no scrutiny, solely because it is legal rather than in association with violence.³⁷⁰

Monthly crime rate comparisons from several states also suggest that since marijuana liberalization and/or legalization, there has been no indicator of an increase in crime.³⁷¹

Violent crimes in association with marijuana are linked to prohibition rather than from the use of marijuana.³⁷² Similar to the prohibition in the 1920's and 1930's, the illicit drug market creates a system where drug dealers can't turn to law enforcement for help.³⁷³

Many different rational facets are used to justify the prohibition of marijuana. Which in whole, justify the rational in keeping firearms out of the hands of marijuana users, but studies show that this threat is a mere illusion. These studies indicate that it substantially burdens a fundamental right.

I. Marijuana on the Brain

Marijuana is a complex plant that has potential for the benefit of its user.³⁷⁴ In addition, marijuana has been shown to be safer than any other recreational drug.³⁷⁵ The current understanding of marijuana is in steep contrast to what the plant was once thought to be.³⁷⁶ Attitudes towards marijuana should shift in accordance with facts, rather than preconceived notions that are used to justify federal regulations such as the classification on the CSA and subsequent firearm restriction to marijuana users (like in *Wilson v. Lynch*, *United States v. Yancey*, *supra*).³⁷⁷

The effects experienced from marijuana are derived from cannabinoids.³⁷⁸ There are over eighty distinct cannabinoids in the marijuana plant.³⁷⁹ The most studied of these cannabinoids is delta-9-tetrahydrocannabinol (THC).³⁸⁰ THC is the psychoactive ingredient responsible for the "high".³⁸¹

³⁶⁸ *ALCOHOL, DRUGS AND CRIME*, National Council on Alcoholism and Drug Dependence, Inc, June 27, 2015, <https://www.ncadd.org/about-addiction/alcohol-drugs-and-crime>

³⁶⁹ Id.

³⁷⁰ 27 C.F.R. § 478.11 (West May 25, 2017)

³⁷¹ Angela Dills, Sietse Goffard, and [Jeffrey Miron](#), Dose of Reality: The Effect of State Marijuana Legalizations CATO institute, September 16, 2016, <https://www.cato.org/publications/policy-analysis/dose-reality-effect-state-marijuana-legalizations>

³⁷² James Gray, *Why Our Drug Laws Have Failed: A Judicial Indictment Of War On Drugs*, 68 (2001)

³⁷³ Id. at 73

³⁷⁴ Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 8 (2016)

³⁷⁵ Matt Ferner, *Marijuana May Be The Least Dangerous Recreational Drug*, Study Shows, Feb 24, 2015, http://www.huffingtonpost.com/2015/02/24/marijuana-safer-than-alcohol-tobacco_n_6738572.html

³⁷⁶ Id.

³⁷⁷ Id.

³⁷⁸ Steve Fox , Paul Armentano, Mason Tvert, *Marijuana is Safer: So Why Are We Driving People to Drink?*, 19 (2013)

³⁷⁹ Id.

³⁸⁰ Id.

³⁸¹ Id.

Other chemicals, such as cannabigerol (CBG) and cannabinol (CBN) does not induce euphoria.³⁸² Other compounds, like the chemical cannabidiol (CBD), counteracts some of the psychoactive effects of THC.³⁸³ CBD is drawing increasing attention from both scientists and medical marijuana providers.³⁸⁴ CBD alone is not intoxicating and there are evidence that it may have anti-anxiety, anti-psychotic, and anti-seizure properties that might make it therapeutically useful.³⁸⁵

The effects of cannabis are dependent on the plant's THC content.³⁸⁶ THC content between 10 or 15 percent would produce psychoactive effects fairly quickly, as well as a mild increase in heart rate.³⁸⁷ The average THC content of most domestic marijuana consumed in America hovers around 5 Percent.³⁸⁸ The physiological experiences after ingesting marijuana are due to the cannabinoids interaction with receptors, so-called CB1 and CB2 receptors.³⁸⁹ The CB1 receptors are located primarily in the brain and regulate, the drug's psychoactive effects.³⁹⁰ The CB2 receptors are located throughout the human body and are responsible for the tangential therapeutic effects.³⁹¹ Marijuana is not pharmacologically capable of causing a fatal overdose, regardless of THC potency.³⁹² According to a 1995 report prepared for the World Health Organization (WHO)³⁹³:

There are no recorded cases of overdose fatalities attributed to cannabis, and the estimated lethal dose for humans extrapolated from animal studies is so high that it cannot be achieved by recreational users.

[Reports](#) published in Scientific Reports, compared the lethality of the recreational use of 10 common drugs, including marijuana, alcohol, tobacco, heroin, cocaine, ecstasy, methamphetamine, diazepam, amphetamine and methadone.³⁹⁴ According to the report, marijuana has the lowest risk of mortality and is safer than the commonly used alcohol and tobacco as well as the rest of the drugs in the study.³⁹⁵ The finding that marijuana has the lowest risk when compared with the other drugs is not surprising, previous research had found that [marijuana is a substantially safer recreational drug](#) than other commonly used recreational drugs examined in this study.³⁹⁶ Marijuana is so much less risky

382 Id.

383 Id.

384 Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, Marijuana Legalization What Everyone Needs to Know, 8 (2016)

385 Id.

386 Steve Fox , Paul Armentano, Mason Tvert, Marijuana is Safer: So Why Are We Driving People to Drink?, 19 (2013)

387 Id.

388 Id. at 20

389 Id.

390 Id.

391 Id.

392 Id.

393 Id.

394 Matt Ferner, *Marijuana May Be The Least Dangerous Recreational Drug*, Study Shows, Feb 24, 2015, http://www.huffingtonpost.com/2015/02/24/marijuana-safer-than-alcohol-tobacco_n_6738572.html

395 Id.

396 Id.

than alcohol and tobacco that the researchers say their results point toward developing policies that prioritize managing the risks associated with alcohol and tobacco, rather than the illicit drugs in the study.³⁹⁷ Marijuana has been classified as Schedule I for decades, yet alcohol and tobacco are exempted from the CSA (which seems to undermine the logic in *United States v. Yancey supra*).³⁹⁸ If science dictated drug policy, alcohol and tobacco would be classified as Schedule I drugs.³⁹⁹

II. Marijuana v. Alcohol

An important factor to consider when viewing marijuana is, what is the standard of measure when warning the public of the dangers of marijuana associated with violence? Alcohol, more than any illegal drug, was found to be closely associated with violent crimes, including murder, rape, assault, child and spousal abuse.⁴⁰⁰ About 3 million violent crimes occur each year in which victims perceived the offender to have been drinking.⁴⁰¹ Statistics related to alcohol use by violent offenders generally show that about half of all homicides and assaults are committed when the offender, victim, or both have been drinking.⁴⁰² Among violent crimes, with the exception of robberies, the offender is far more likely to have been drinking than under the influence of other drugs.⁴⁰³ Because alcohol use is legal and pervasive, it plays a particularly strong role in the relationship between crime and other social problems.⁴⁰⁴ Alcohol is a factor in 40% of all violent crimes today, and according to the Department of Justice, 37% of almost 2 million convicted offenders currently in jail, reported that they were drinking at the time of their arrest.⁴⁰⁵

Former U.S. Drug Czar, Barry McCaffrey stated that:

[I]f you talk to a policeman on a beat in any one of these American cities, alcohol is a mildly addictive, readily available drug that is responsible for more damage to our society than any other drug on the street. And it is also associated in a dramatic way with violent behavior.⁴⁰⁶

Alcohol-related violence is not limited solely to the United States.⁴⁰⁷ Similar trends exist throughout the world.⁴⁰⁸ Some experts, however, argue that violence is not caused by alcohol per se; rather, that abusive partner possess personality traits that contribute to both their drinking and their violent behavior.⁴⁰⁹ But, most domestic violence experts acknowledge that booze is a serious risk factor in

397 Id.

398 Id.

399 Id.

400 *ALCOHOL, DRUGS AND CRIME*, National Council on Alcoholism and Drug Dependence, Inc, June 27, 2015, <https://www.ncadd.org/about-addiction/alcohol-drugs-and-crime>

401 Id.

402 Id.

403 Id.

404 Id.

405 Id.

406 Steve Fox , Paul Armentano, Mason Tvert, Marijuana is Safer: So Why Are We Driving People to Drink?, 103 (2013)

407 Id. at 104

408 Id.

409 Id. at 105

abusive relationships.⁴¹⁰ A team of investigators at the University of Buffalo concluded that incidents of male-to-female physical aggression were eight times more likely on days when men drank as compared to days when they did not.⁴¹¹ Acts of severe male-to-female physical aggression were eleven times more likely on days when men consumed alcohol.⁴¹² In a follow-up study examining the effects of alcohol and other psychoactive drugs cannabis, cocaine, and heroin on interpersonal violence, found that alcohol significantly increased the likelihood of male partner violence (as did cocaine).⁴¹³ On the other hand, cannabis was not associated with an increased likelihood of physical aggression.⁴¹⁴ D.C. Police Chief Cathy Lanier stated that:⁴¹⁵

Marijuana smokers are not going to attack and kill a cop...They just want to get a bag of chips and relax. Alcohol is a much bigger problem.

Thus, under the current federal statutes, an alcoholic or user of alcohol can easily purchase a firearm with no scrutiny (*See Supra, III. Post-Heller Conflict: Gun Control Act 1968 v. Marijuana, statutes*). Yet marijuana users who are shown to be less violent are highly scrutinized.⁴¹⁶ This creates a conflict that reveals the rationale behind the regulations against marijuana users as illogical.

III. Comparison of Before Verse After Marijuana Laws

Monthly crime rate comparisons from several states also suggest that since marijuana liberalization and/or legalization, there has been no indicator of an increase in crime.⁴¹⁷ The rates for violent crimes and property crimes remained constant.⁴¹⁸

In Denver, Colorado, for all reported violent crimes and property crimes remain essentially constant after 2012 and 2014.⁴¹⁹ There were no substantial deviations and other cities in Colorado mirror those findings as well.⁴²⁰

410 Id.

411 Id.

412 Id.

413 Id.

414 Id.

415 Ricardo Baca, *D.C. police chief: 'Marijuana smokers are not going to attack and kill a cop'*, The Denver Post, Mar 2, 2015, <http://www.denverpost.com/2015/03/02/d-c-police-chief-marijuana-smokers-are-not-going-to-attack-and-kill-a-cop/>

416 Christopher Ingraham, *Researchers Got People Drunk Or High, Then Made A Fascinating Discovery About How We Respond*, Washington Post, July 20, 2016, https://www.washingtonpost.com/news/wonk/wp/2016/07/20/researchers-have-finally-found-out-why-youre-such-a-mean-drunk/?utm_term=.151e6da3af27

417 Angela Dills, Sietse Goffard, and Jeffrey Miron, *Dose of Reality: The Effect of State Marijuana Legalizations* CATO institute, September 16, 2016, <https://www.cato.org/publications/policy-analysis/dose-reality-effect-state-marijuana-legalizations>

418 Id.

419 Id.

420 Id.

In Seattle Washington, both violent crimes and property crimes declined steadily over the past 20 years.⁴²¹ There were no major deviations after marijuana liberalization.⁴²² Crime in Seattle has neither soared nor plummeted in the wake of legalization.⁴²³

In Portland Oregon, shows similar finding in monthly violent and property crime.⁴²⁴ Crimes in both areas remained steady after legalization.⁴²⁵ Between 2012 and 2014, Oregon prohibited the recreational use of marijuana, while marijuana sales and consumption were fully legal in neighboring Washington.⁴²⁶ When looking for spillover effects in Oregon, legalization in Washington and the opening of stores there did not produce rising crime rates across the border.⁴²⁷ Elsewhere in Oregon, there were no discernible changes in crime trends before and after legalization or medical marijuana liberalization.⁴²⁸

IV. Marijuana Prohibition: Illegal Grows

Violent crimes in association with marijuana are linked to prohibition rather than from the use of marijuana.⁴²⁹ Similar to the prohibition in the 1920's and 1930's, the illicit drug market creates a system where drug dealers can't turn to law enforcement for help.⁴³⁰ Rather, drug dealers in the illicit drug trade similar to alcohol prohibition use mean of violence to enforce rules and conduct punishment.⁴³¹ Also, due to the fact that illicit drug dealers cannot use the federal banking system (therefore the illicit drug trade is an all cash business), this creates an attractive opportunity for robbers.⁴³² Because rationally, transactions will be conducted in cash instead.⁴³³ The drug war and marijuana in particular, is no different. Economic laws do not change but, serve as a reminder that the laws of supply and demand dictate.⁴³⁴ The prohibition of controlled substances inflate prices because this restricts the flow of supply, yet demand remains high.⁴³⁵ Rationally, the only way to protect and exploit this economic loophole is with violence.⁴³⁶ Other times drug users would commit crimes in order to sustain the drug habit.⁴³⁷

421 Id.

422 Id.

423 Id.

424 Id.

425 Id.

426 Id.

427 Id.

428 Id.

429 James Gray, *Why Our Drug Laws Have Failed: A Judicial Indictment Of War On Drugs*, 68 (2001)

430 Id. at 73

431 Id. at 72

432 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 30 (2017); Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 161 (2017)

433 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 277 (2017)

434 James Gray, *Why Our Drug Laws Have Failed: A Judicial Indictment Of War On Drugs*, 73 (2001)

435 Id.

436 Id.

437 Id. at 70

Guns and Weed by Michael Duong

In a California interim hearing in 1983, Gene Wong counsel to the Senate Committee described the precautions that operators of illegal marijuana grow sites would take protect their investments:

Illegal growers carry weapons ranging from shotguns to machetes, and have been known to use them to protect their livelihood. They also install booby traps ranging from punji sticks to hand grenades triggered by trip wires. The cultivators use their weapons and traps to protect against dope robbers, as well as against law enforcement officers, innocent hikers, hunters, ranchers, and property owners who happen to come upon the fields. The same official also suggested that 80% of the growers are armed during the growing season, and that all of them have some weapon at harvest time. Even tigers have been found protecting marijuana patches.⁴³⁸

Author/journalist Emily Brady spent a year living with residents of Humboldt County, California. Her interviews with the residents of Humboldt County, sheds light into the personal accounts of the life of illicit marijuana grow operators and details the dangers of such illicit operations. During rip-off season, thieves could make off with a year's crop in one fell swoop.⁴³⁹ Paranoia permeates the hills of Humboldt during such time of year.⁴⁴⁰ It explains the pit bulls in the back of the trucks around town, the brisk sales of motion-detecting cameras, and alarm systems at the Security Store up in the Meadows Business Park.⁴⁴¹ While most outsiders feared to stumble upon armed growers in Humboldt, most growers feared being stumbled upon, by armed men themselves.⁴⁴² It wasn't only money they risked losing, but losing their lives over marijuana as well.⁴⁴³

In 2012, the Humboldt County Sheriff's Office analyzed the past eight years of data on local homicides.⁴⁴⁴ Of the thirty-eight murders committed during that period, twenty-three, or 70 percent, were drug-related (usually marijuana).⁴⁴⁵ Most of the murders were business violence.⁴⁴⁶ During that same period in Napa County, which has a similar population size and whose economy is based on alcohol, there were only eight murders, and just one was marijuana-related.⁴⁴⁷

In a conversation Brady had with "Emma" (the names and characteristics have been changed to protect the identity of people in her book), Emma told a story of Sean Akselsen.⁴⁴⁸ Emma heard that Sean Akselsen had agreed to sell a pound of pot to a couple of guys he had met at a gas station in

⁴³⁸ Gene Wong, Kate Karpilow, Alf Brandt, & Catalina Lira, *Paper on Marijuana: A Background Paper for the Interim Hearing of the Senate Committee on Judiciary*, 12 (1983)

⁴³⁹ Emily Brady, *Humboldt Life on America's Marijuana Frontier*, 27 (2013)

⁴⁴⁰ Id.

⁴⁴¹ Id.

⁴⁴² Id.

⁴⁴³ Id.

⁴⁴⁴ Id. at 29

⁴⁴⁵ Id.

⁴⁴⁶ Id. at 30

⁴⁴⁷ Id.

⁴⁴⁸ Id. at 86

town.⁴⁴⁹ According to the Wanted posters that were put up around town after the murder.⁴⁵⁰ The men were from the Bay Area and had followed Akselsen out on the Shelter Cove-Briceland Road in a forest green Camaro.⁴⁵¹ Where Akselsen brought them to the privacy of the Whitethorn Junction swimming hole.⁴⁵² In such a small community, a friend stumbled upon Akselsen's body.⁴⁵³ Akselsen's body was shirtless and his boxers poked out over the top of his jeans.⁴⁵⁴ There was a pool of blood around his head from where he had been shot.⁴⁵⁵ Akselsen was only nineteen.⁴⁵⁶ And Akselsen wasn't the only person killed in a marijuana business-related violence that summer.⁴⁵⁷

The greatest social cost of prohibiting most substances is the crime, violence, and corruption engendered by the illicit drug trade.⁴⁵⁸ However, the bulk of those problems stem from the markets for illegal stimulates such as cocaine/crack, methamphetamine, and opiates, not marijuana.⁴⁵⁹ There are not many drive-by shootings between rival marijuana gangs in the United States.⁴⁶⁰ Marijuana production, distribution, and consumption usually do not involve transactions or penalties with stakes high enough to make it worth killing someone.⁴⁶¹ For example, a cocaine shipment entering the United States might weigh 250 kilograms and be worth \$10,000-\$15,000 per kilogram, for a total value of \$3 million; that shipment could be hidden in the trunk of a large sedan.⁴⁶² On the other hand, marijuana entering the United States from Mexico costs perhaps a few hundred dollars per pound, so \$3 million worth would fill a five-ton truck.⁴⁶³ There is no point in trying to shoot one's way out of a traffic stop in a semi-truck.⁴⁶⁴ In addition to that, 84 percent of people said they obtained marijuana from a friend or relative, and 51 percent say it was given to them for free.⁴⁶⁵

There have been reports of changes in domestic black market for marijuana as states have moved to legalize it for medical and recreational purposes.⁴⁶⁶ For instance, the market in Denver,

449 Id.

450 Id.

451 Id.

452 Id.

453 Id.

454 Id.

455 Id.

456 Id.

457 Id.

458 Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 124 (2016)

459 Id.

460 Id.

461 Id.

462 Id.

463 Id. at 125

464 Id.

465 Id.

466 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 25 (2017)

Colorado, has been described as smaller and less violent than it previously was.⁴⁶⁷ In addition buyers there are said to be purchasing more from “mom-and-pop operations” rather than from entities affiliated with larger cartels.⁴⁶⁸ Many aspects of prohibition between alcohol and prohibition on marijuana are analogist.⁴⁶⁹ Learning from the past as well as considering data of current marijuana legalization, indicates that violent criminals in association with marijuana are due to prohibition of marijuana rather than marijuana itself creating violent behavior.⁴⁷⁰

E. Legalized Marijuana and Guns

The legalization of marijuana seems to encourage the violation of federal gun regulations for a few reasons.⁴⁷¹ However, the intent behind the DOJ 2013 Cole Memo targets the illicit drug market and not state-sanctioned use; the purpose behind GCA of 1968 was on violence and crime; In addition, court cases doesn't seem to offer any bright lines with the GCA of 1968.

Medical/Recreational marijuana states creates a dilemma with federal statutes because of the need for protection of assets, security, and self-defense.⁴⁷² In California for example, with the passage of Proposition 64. It is estimated that, in net additional state and local tax revenues, [marijuana] could eventually range from the high hundreds of millions of dollars to over \$1 billion annually.⁴⁷³ Which would result in the need for added protection because of the lack of financial institutions involved.⁴⁷⁴ This would result in greater dealings in cash transactions.⁴⁷⁵

I. Other Statutes Besides § 922(g)(3)

Provided that residents of California want to follow state law, but what are the mechanisms are in place for them to defend their property? How will this protect investors, where the estimate in tax dollars alone is in the hundreds of millions? This means that the product and the profits it will produce will be substantially more. But, in a system where it is not federal banking support.⁴⁷⁶ It raises a serious risk for those law-abiding citizens who wishes to play by the state rules. The legalization of marijuana seems to encourage the violation of the GCA. Where a gun is an essential tool in deterring crime and self-defense. In the illicit drug trade, criminals generally do not follow federal gun control laws.⁴⁷⁷ Such statutes besides § 922(g)(3)(which applies to *users* of controlled substances) are:

467 Id.

468 Id.

469 Tom James, The Failed Promise of Legal Pot, The Atlantic, May 9, 2016, <https://www.theatlantic.com/politics/archive/2016/05/legal-pot-and-the-black-market/481506/>

470 *Prohibition-Era Gang Violence Spurred Congress To Pass First Gun Law*, NPR, June 30, 2016, <http://www.npr.org/2016/06/30/484215890/prohibition-era-gang-violence-spurred-congress-to-pass-first-gun-law>; James Gray, *Why Our Drug Laws Have Failed: A Judicial Indictment Of War On Drugs*, 72 (2001); Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 25 (2017)

471 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 161 (2017)

472 Id.

473 *California General Election Official Voter Information Guide*, 90, Nov. 8, 2016, <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/prop64-title-sum-analysis.pdf>

474 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 16 (2017); Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 277 (2017)

475 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 277 (2017)

476 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 13 (2017)

18 U.S.C. § 922 (q)(1): The Congress finds and declares that —

(A) crime, particularly crime involving *drugs* and *guns*...

(B) crime at the local level is exacerbated by the *interstate* movement of *drugs*, *guns*, and criminal gangs;⁴⁷⁸

18 U.S.C. § 924 (c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or *drug trafficking crime* (including a crime of violence or *drug trafficking crime* that provides for an enhanced punishment if committed by the use of a *deadly* or *dangerous weapon* or device) for which the person may be prosecuted in a court of the United States, *uses* or carries a *firearm*, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or *drug trafficking crime*--

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.⁴⁷⁹

18 U.S.C. § 924 (a)(1):

(A) knowingly makes any false statement or representation with respect to the information...

(B) knowingly violates subsection shall be fined under this title, imprisoned not more than five years, or both.⁴⁸⁰

The Supreme Court ruling in *Gonzales v. Raich*, held Congress' Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana in compliance with California law.⁴⁸¹ In addition to that, transportation of a valuable commodity draws criminals looking to rob them.⁴⁸² Under federal law, marijuana is a controlled substance, so it seems that it is a *crime* to transport marijuana while carrying a firearm under § 922 (q)(1). But, the dilemma is, if a person is already transporting marijuana in violation of § 922 (q)(1), why not carry a firearm for self-defense? Now they would be in violation of § 924 (c)(1)(A) as well.

In *Wilson*, in regards to medical marijuana card holder as a political statement, a person may purchase firearms before acquiring or after surrendering a registry card.⁴⁸³ Where in *Carter*, the prohibition lasts only as long as the individual remains an unlawful drug user or addict.⁴⁸⁴ In states where marijuana is allowed (medical and/or recreational), the current case law interpretation of the

477 James B. Jacobs, *Can Gun Control Work?*, 107 (2002)

478 18 U.S.C.A. § 922 (West 2017)

479 18 U.S.C.A. § 924 (West 2017)

480 *Id.*

481 *Gonzales v. Raich*, 125 S.Ct. 2195, 2196 (U.S. 2005)

482 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 161; 277 (2017)

483 *Wilson v. Lynch*, 835 F.3d 1083, 1097 (9th Cir. 2016)

484 *United States v. Carter*, 750 F.3d 462, 466 (4th Cir. 2014)

GCA seems to punish those who want to follow the law, rather than break the law. In the instance of a recreational state, people use marijuana recreationally for the same reason people drink alcohol.⁴⁸⁵ Marijuana users who smoke occasionally would on some days, be considered an unlawful drug user, and other days, they are allowed to purchase a handgun. On the Firearm Transaction Record Form 4473, if a [state] legal smokers ticks “yes” on the little box that asks, “Are you an unlawful user of or addicted to, marijuana or any other depressant, stimulant or narcotic drug, or any other controlled substance?” they can’t buy a gun.⁴⁸⁶ If they tick “no” they’d be lying.⁴⁸⁷ Lying is in violation of § 924 (a) (1).⁴⁸⁸ The penalties may include fines, prison and the permanent loss of gun rights.⁴⁸⁹

Who would determine that the individual is no longer an *unlawful* drug user? What effect does the statue have, after the ex-drug user purchased the handgun, but use marijuana sometime down the road? It seems that this reasoning would only benefit those who want to avoid following federal regulations by telling people to just wait a week, then purchase a handgun or purchase the handgun, then use illegal drugs. In context, a person who is prescribed CBD oil, which doesn’t create the effect of high, would not be allowed to purchase a handgun (marijuana card holder similar to *Wilson*). These people who are likely, more vulnerable than the recreational user.⁴⁹⁰ With the federal relief-from-disabilities program being defunded in 1992.⁴⁹¹ A person cannot seek relief from their prohibition of their rights. Although there are state-led relief programs, it only applied to the *mentally defective* or someone who had been committed to a *mental institution*.⁴⁹² Another class of people this state and federal law conflict may impact are minorities. In an article by Benjamin Levin, he among other scholars found that gun possession laws disproportionality impacts minorities more so that, others.⁴⁹³ As a result, there would be more risk for people in minority communities, to engage in the legalized marijuana market.

States such as Alaska has and Montana had is the Firearm Freedom Act.⁴⁹⁴ The legislation sought to nullify the federal government's ability to regulate personal firearms, firearm accessories, and ammunition that are manufactured entirely in the state and remained in the state.⁴⁹⁵ However, in

485 Steve Fox , Paul Armentano, Mason Tvert, Marijuana is Safer: So Why Are We Driving People to Drink?, 24 (2013)

486 Robert Farago, *ATF to Pot Smokers: No Guns for You, Dude, The Truth About Guns*, May 29, 2013, <http://www.thetruthaboutguns.com/2013/05/robert-farago/atf-to-pot-smokers-no-guns-for-you-dude/>

487 Id.

488 18 U.S.C.A. § 924 (West 2017)

489 Robert Farago, *ATF to Pot Smokers: No Guns for You, Dude, The Truth About Guns*, May 29, 2013, <http://www.thetruthaboutguns.com/2013/05/robert-farago/atf-to-pot-smokers-no-guns-for-you-dude/>

490 See *Wilson v. Lynch*, 835 F.3d 1083, 1094 (9th Cir. 2016)

491 Nash E. Gilmore, A Bridge Over Troubled Water: The Second Amendment Guarantee for the Previously Mentally Institutionalized, 86 Miss. L.J. Supra 1, 15 (2017)

492 Id. at 17

493 Benjamin Levin, *Guns and Drugs*, 84 Fordham L. Rev. 2173, 2179 (2016)

494 John Hill, *North to the Future of the Right to Bear Arms: Analyzing the Alaska Firearms Freedom Act and Applying Firearm Localism to Alaska*, 33 Alaska L. Rev. 125, 126 (2016)

495 Id.

Montana v. Holder, the Montana Firearm Freedom Act was held to be invalid.⁴⁹⁶ Alaska's Firearm Freedom Act will likely share a similar fate.⁴⁹⁷

II. The Current State of Limbo

Until 2012, the recreational use of marijuana had not been legal in any U.S. state since the passage of the CSA in 1970.⁴⁹⁸ In November 2012, citizens of Colorado and Washington voted to legalize, regulate, and tax small amounts of marijuana for recreational use.⁴⁹⁹ In November 2014, legalization initiatives also passed in Alaska, Oregon, and the District of Columbia (DC).⁵⁰⁰ Later, in November 2016, recreational legalization initiatives passed in Massachusetts, California, Maine, and Nevada.⁵⁰¹

In an August 2013 memorandum, Former Deputy Attorney General James Cole stated, that while marijuana remains an illegal substance under the CSA, DOJ would focus its resources on the most significant threats in the most effective, consistent, and rational way.⁵⁰² The memo outlined enforcement priorities for DOJ such as:

- Preventing violence and the use of *firearms* in the cultivation and distribution of marijuana.⁵⁰³

Cole's further warned that "[t]hose who engage in transactions involving the proceeds of such activity [cultivating, selling, or distributing of marijuana] may be in violation of federal money laundering statutes and other federal financial laws."⁵⁰⁴

Federal enforcement focuses on traffickers rather than targeting individuals for drug use and possession, federal law enforcement has generally focused its counterdrug efforts on criminal networks involved in the drug trade.⁵⁰⁵ Low-level users are made largely by state and local police, for marijuana possession offenses.⁵⁰⁶ However, statements made on March 15, 2017, by current Attorney General Jeff Sessions does not seem promising for marijuana advocates.⁵⁰⁷

However, even under in the context of recreational marijuana use, the phrasing of the Cole memo, "Preventing violence and the use of *firearms* in the *cultivation* and *distribution* of marijuana" is

⁴⁹⁶ Id. at 139

⁴⁹⁷ Id. at 144

⁴⁹⁸ Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 9 (2017)

⁴⁹⁹ Id.

⁵⁰⁰ Id.

⁵⁰¹ Id.

⁵⁰² Id. at 13

⁵⁰³ Id.

⁵⁰⁴ Id.

⁵⁰⁵ Id. at 11

⁵⁰⁶ Id.

⁵⁰⁷ Spencer Buell, *Jeff Sessions: Marijuana Is "Only Slightly Less Awful" Than Heroin*, Boston Daily, March 15, 2017, <http://www.bostonmagazine.com/news/blog/2017/03/15/jeff-sessions-marijuana-slightly-less-awful-heroin/>

a catch-22.⁵⁰⁸ One way a legalized market differs from an illicit market is that it is done more publicly.⁵⁰⁹ In being that “legitimate” businesses aim to attract the largest amount of customers possible and due to competition from other businesses, seek to protect or expand their market.⁵¹⁰ By drawing attention (the purpose behind *marketing* a business), the “legitimate” business earns more, but also would draw unwanted attention from criminals.⁵¹¹ The firearm used in a market where marijuana is legalized serves as a deterrence for violence.⁵¹² It provides self-defense for those who wants to protect their investments or life, in the event of a burglary or robbery.⁵¹³ In an industry that lacks access to a banking system, this creates the further need for firearm use.⁵¹⁴ Because of high value of the product and the cash, growers, distributors, and retailers become a target for any robber that is brazen enough to conduct the crime.⁵¹⁵

III. Legislative Intent of the GCA of 1968

Although the prohibition of marijuana users under § 922(g)(3), is fairly recent, the legislative history isn’t quite clear.⁵¹⁶ The final version of § 922(g)(3) arose from a dispute between the two House of Congress over its proper scope.⁵¹⁷ The version of the bill included prohibitions on the sale and other dispositions of firearms and ammunition extended to “narcotic addict or drug user.”⁵¹⁸ However, the Senate version was more limited in scope and had “no prohibition was placed on sales or other dispositions, shipments, or receipts, of firearms or ammunition involving narcotic addicts [or] drug users...”⁵¹⁹ For reasons unclear from the legislative record, the bill agreed to in conference “adopt[ed] the broader restrictions in the House bill.”⁵²⁰ Although, it is not clear why § 922(g)(3), applied to narcotic users. What is known is that before the GCA of 1968 was passed on October 22, there were a lot of civil unrest, the assassination of John F. Kennedy, Martin L. King, Robert F. Kennedy, and the counter culture.⁵²¹ The legislative intent of the GCA 1968, H.R. 17735, in section 101 stated:

The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any *undue* or *unnecessary* Federal restrictions or burdens on

508 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 161 (2017)

509 *Managing a Business*, U.S. Small Business Administration, May 31, 2017, <https://www.sba.gov/managing-business/running-business/marketing/marketing-101>

510 *Id.*

511 *Id.*; Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 277 (2017)

512 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 161; 277 (2017)

513 *Id.*

514 *Id.*

515 *Id.*

516 *US v. Carter*, Appellate Brief 2013 WL 1129905 (C.A.4) (Appellate Brief) 14

517 *Id.*

518 *Id.*

519 *Id.*

520 *Id.*

521 Austin Sarat & Malcolm Feeley, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration*, 43 (1980)

law-abiding citizens with respect to the acquisition, possession, or use of *firearms* appropriate to the purpose of *hunting, trapshooting, target shooting, personal protection, or any other lawful activity*, and that this title is *not* intended to *discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes*, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.⁵²²

Under this perspective and the current trend/views of marijuana, the motivating factors behind the GCA of 1968 is placed at odds. The purpose as stated in the GCA, is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence. It shared a similar reasoning behind the Omnibus Crime Control and Safe Street Act of 1968, which passed shortly before the GCA.⁵²³ Under § 2516, of the Omnibus Crime Control and Safe Street Act Authorization, which authorizes interception of wire or oral communications stated:

(1)(e) any offense involving bankruptcy fraud or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, *marihuana*, or *other dangerous drugs*, punishable under any law of the United States.⁵²⁴

It is clear that when Congress in 1968 was talking about narcotic drugs and other dangerous drugs, marijuana was considered dangerous. This is in stark contrast to how marijuana is viewed today, whereas of October 2016, showed that, 60% of surveyed adults feel that marijuana should be legalized.⁵²⁵

In addition, currently, Congress seems to show a similar, more relaxed view as well (as in the Rohrabacher-Farr Amendment).⁵²⁶ Congress has included provisions in appropriation acts that prohibit DOJ from using appropriated funds to prevent certain states and the District of Columbia from, “implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”⁵²⁷ Several federal courts have interpreted the provision as prohibiting DOJ from prosecuting individuals who while, comply with the laws of one of the states covered by the appropriations provisions, have allegedly distributed, possessed, or cultivated medical marijuana in violation of federal law.⁵²⁸ Although this restricts DOJ’s ability to expend funds to enforce federal law, at least one court has made clear that it does not provide immunity from prosecution for federal marijuana offenses.⁵²⁹

Conclusion

With the passage of initiatives on recreational use in Colorado, Washington, California and numerous states that allow medical marijuana, the fundamental rights of gun ownership are infringed

522 P.L. 90-618, H.R. 17735, 90th Cong. (1968) <https://www.gpo.gov/fdsys/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213-2.pdf>

523 William J. Vizzard, *The Gun Control Act of 1968*, 18 St. Louis U. Pub. L. Rev. 79, 83 (1999)

524 P.L. 90-351, H. R. 5037, 90th Cong. (1968) https://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/1615.pdf

525 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 3 (2017)

526 Mark K. Osbeck & Howard Bromberg, *Marijuana law in a nutshell*, 290 (2017)

527 Lisa N. Sacco, Erin Bagalman, Kristin Finklea, Sean Lowry, *The Marijuana Policy Gap and the Path Forward*, Congressional Research Service, 15 (2017)

528 Id.

529 Id.

upon when people who are recreational users and more importantly people who are diagnosed with a medical condition, are systemically marginalized due to their choice of intoxicant/medicine.⁵³⁰ In the trend of legalization (medical and/or recreational) by states and the changing attitude toward marijuana, laws regulating the sale and possession of firearms against marijuana users should be changed as well. A large portion of Americans who benefit medically and enjoy it recreationally are substantially impacted by restrictions in current laws. A major contribution for the current regulations are due to misunderstanding and fear of Marijuana.⁵³¹

The inherent right of self-defense has been central in the decision in *Heller*.⁵³² Before constitutional rights of the people guarantee by the Second Amendment (*Heller* and *McDonald*) are infringed upon, there must be considerations of the effect it may cause to law-abiding citizens who happens to use Marijuana recreationally or medically.⁵³³ Should the rights of medical marijuana users be deprived of the rights to own guns? In situations where people with medical conditions who find benefit from the use of marijuana, they now have to choose between ineffective treatments over a treatment that may work better for them.⁵³⁴ Some of our most vulnerable members of society such as cancer patients, who choose marijuana as a treatment, are legally deprived of their rights to bear arms.⁵³⁵ These people would be forced to make the decision of whether to have the ineffective treatment and retain the means of modern self-defense or choose the more effective treatment and give up the right.⁵³⁶ Gun ownership is a fundamental right in which people are deprived of because of decades of misinformation.⁵³⁷ Where it has created a preconceived notion that users of Marijuana are violent or irrational people.⁵³⁸

⁵³⁰ Melia Robinson, It's 2017: Here's where you can legally smoke weed now, Business Insider, Jan. 8, 2017, <http://www.businessinsider.com/where-can-you-legally-smoke-weed-2017-1>; *Wilson v. Holder*, 7 F. Supp. 3d 1104, 1125 (D. Nev. 2014)

⁵³¹ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 20 (2016)

⁵³² *District of Columbia v. Heller*, 128 S. Ct. 2783, 2822 (U.S. 2008)

⁵³³ Steve Fox, Paul Armentano, Mason Tvert, *Marijuana is Safer: So Why Are We Driving People to Drink?*, 24 (2013)

⁵³⁴ Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, *Marijuana Legalization What Everyone Needs to Know*, 207 (2016)

⁵³⁵ *Wilson v. Lynch*, 835 F.3d 1083, 1100 (9th Cir. 2016)

⁵³⁶ *Id.*

⁵³⁷ Margaret J. Goldstein, *Legalizing Marijuana Promises and Pitfalls*, 20 (2016)

⁵³⁸ *Wilson v. Lynch*, 835 F.3d 1083, 1097 (9th Cir. 2016)