



High on Federalism

States Push Back Against Federal Marijuana Regulation

By [Ahmanielle Hall](#) - Tuesday, Oct 1, 2013

Eighteen U.S. states and Washington, D.C. have legalized the use of medical marijuana, although possession and distribution of the drug are in violation of international treaties and the federal Controlled Substances Act. As states begin to legalize it for recreational use, the federal government is observing how it can best respond to these changes in state law.

Ilya Shapiro, senior fellow in Constitutional Studies and editor-in-chief of the *Cato Supreme Court Review* at the [Cato Institute](#) recently visited USC Gould to discuss the battle between the federal government and the states on this issue. The event, "High on Federalism," was sponsored by the USC Gould Federalist Society.

Shapiro told dozens of students that the federal government is "in a bind.

"Congress's preemptive power is limited to laws that conflict directly with federal law," Shapiro said. "So if some state says that if anyone tries to arrest someone for possessing or using medical marijuana that's a criminal offense, that's really preempted. You can't have a Colorado Sheriff arresting an officer of the DEA."

Shapiro said that Congress and the Controlled Substances Act are very strict, listing marijuana as a Schedule I drug. The U.S. Drug Enforcement Administration (DEA) regards drugs on that list as having no medical value and high potential for abuse. Heroin, LSD and ecstasy are other Schedule I drugs. But some states have dismissed the DEA's warnings about marijuana's adverse effects. Shapiro says that with state legalization of marijuana, the federal government will have to wait and assess the legislation to understand how to regulate it.

"The federal government doesn't have the law enforcement resources to enforce this ban vigorously, or the ability to marshal social, cultural influences to get compliance," Shapiro said. "Contrary to conventional wisdom, it's the states and not the feds that have won in this struggle, or are winning at least. So federal supremacy has its limits, and in the drug regulatory area, a lot of those limits are simply practical."

He says the Department of Justice is concerned about the influence these states will have on those that have not legalized the drug. Washington and Colorado took the initiatives a step further last year by

legalizing and regulating marijuana not only for medicinal purposes, but also for recreational use. In Washington, people 21 and older are allowed to buy up to one ounce of marijuana from licensed retailers and Colorado allows for the same purchase amount and for growing up to six plants in a private, secure area.

When asked to respond to the states' decision, the federal government decided to observe the issue, according to Shapiro.

"It is such a fluid policy space," Shapiro said. "It takes time to figure out how to enforce."

Students spoke about other issues surrounding legalization of marijuana, such as regulating vending machines, legalization's effect on the black market and international criminal activity related to the selling of the drug. Regardless of how the federal government eventually decides to regulate marijuana use, Shapiro said the issue had long-term federalism implications.

"When it comes to extending this to other avenues, it could apply to any issue," Shapiro said. "Whether it is guns or anything else, states can say we will not enforce federal law and we don't have to. The war over medical marijuana may largely be over, although scimmages will continue."