MARIJUANA LAW, POLICY, AND AUTHORITY
Editorial Advisors

Rachel E. Barkow
Segal Family Professor of Regulatory Law and Policy
Faculty Director, Center on the Administration of Criminal Law
New York University School of Law

Erwin Chemerinsky
Dean and Distinguished Professor of Law
Raymond Pryke Professor of First Amendment Law
University of California, Irvine School of Law

Richard A. Epstein
Laurence A. Tisch Professor of Law
New York University School of Law
Peter and Kirsten Bedford Senior Fellow
The Hoover Institution
Senior Lecturer in Law
The University of Chicago

Ronald J. Gilson
Charles J. Meyers Professor of Law and Business
Stanford University
Marc and Eva Stern Professor of Law and Business
Columbia Law School

James E. Krier
Earl Warren DeLano Professor of Law
The University of Michigan Law School

Tracey L. Meares
Walton Hale Hamilton Professor of Law
Yale Law School

Richard K. Neumann, Jr.
Professor of Law
Maurice A. Deane School of Law at Hofstra University

Robert H. Sitkoff
John L. Gray Professor of Law
Harvard Law School

David Alan Sklansky
Stanley Morrison Professor of Law
Faculty Co-Director, Stanford Criminal Justice Center
Stanford Law School
MARIJUANA LAW, POLICY, AND AUTHORITY

ROBERT A. MIKOS
Professor of Law
Vanderbilt University Law School
About Wolters Kluwer Legal & Regulatory U.S.

Wolters Kluwer Legal & Regulatory U.S. delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

Serving customers worldwide, its legal and regulatory portfolio includes products under the Aspen Publishers, CCH Incorporated, Kluwer Law International, ftwilliam.com and MediRegs names. They are regarded as exceptional and trusted resources for general legal and practice-specific knowledge, compliance and risk management, dynamic workflow solutions, and expert commentary.
## Summary of Contents

<table>
<thead>
<tr>
<th>Contents</th>
<th>xi</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>xxvii</td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>xxix</td>
</tr>
</tbody>
</table>

### PART I
**INTRODUCTORY MATERIALS**

<table>
<thead>
<tr>
<th>CHAPTER 1</th>
<th>Introduction</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAPTER 2</td>
<td>What Is Marijuana?</td>
<td>17</td>
</tr>
</tbody>
</table>

### PART II
**MARIJUANA USERS**

<table>
<thead>
<tr>
<th>CHAPTER 3</th>
<th>The Regulation of Marijuana Users in Prohibition Regimes</th>
<th>35</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAPTER 4</td>
<td>The Regulation of Marijuana Users in Legalization Regimes</td>
<td>99</td>
</tr>
<tr>
<td>CHAPTER 5</td>
<td>Policy Toward Marijuana Users</td>
<td>195</td>
</tr>
<tr>
<td>CHAPTER 6</td>
<td>Authority over Marijuana Users</td>
<td>253</td>
</tr>
</tbody>
</table>

### PART III
**MARIJUANA SUPPLIERS**

<table>
<thead>
<tr>
<th>CHAPTER 7</th>
<th>The Regulation of Marijuana Suppliers in Prohibition Regimes</th>
<th>303</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAPTER 8</td>
<td>The Regulation of Marijuana Suppliers in Legalization Regimes</td>
<td>413</td>
</tr>
<tr>
<td>CHAPTER 9</td>
<td>Policy Toward Marijuana Suppliers</td>
<td>483</td>
</tr>
<tr>
<td>CHAPTER 10</td>
<td>Authority over Marijuana Suppliers</td>
<td>527</td>
</tr>
</tbody>
</table>
# Summary of Contents

## PART IV

### THIRD PARTIES

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>The Regulation of Third Parties</td>
<td>571</td>
</tr>
<tr>
<td>12</td>
<td>The Law, Policy, and Authority Issues Confronting Professionals</td>
<td>601</td>
</tr>
<tr>
<td>13</td>
<td>The Law, Policy, and Authority Issues Confronting Businesses</td>
<td>645</td>
</tr>
<tr>
<td>14</td>
<td>The Law, Policy, and Authority Issues Confronting Government Officials</td>
<td>697</td>
</tr>
</tbody>
</table>

*Table of Cases* 735
*Index* 741
## Contents

*Preface*  
xxvii  
*Acknowledgments*  
xxix  

**PART I**  
**INTRODUCTORY MATERIALS**  
1  

**CHAPTER 1**  
**Introduction**  
3  

A. Why Care About Marijuana Law and Policy?  
4  

B. Using This Book  
7  

1. The Topics Covered in the Book  
7  

2. The Organization of the Book  
9  

3. The Features of the Book  
13  

**CHAPTER 2**  
**What Is Marijuana?**  
17  

A. What Is Marijuana?  
17  

Notes and Questions  
20  

B. Controversies over the Legal Definition of Marijuana  
21  

1. Is It Still Marijuana if It Does Not Contain THC?  
21  

*New Hampshire Hemp Council, Inc. v. Marshall*  
22  

Notes and Questions  
25  

2. Is Cannabis Indica Covered by the Definition of Marijuana?  
27  

*United States v. Honneus*  
28  

Notes and Questions  
29  

3. Is Synthetic Marijuana (K2, Spice, etc.) Considered (or Treated Like) Marijuana?  
29  

Notes and Questions  
31
PART II
MARIJUANA USERS

CHAPTER 3
The Regulation of Marijuana Users in Prohibition Regimes

A. What Is Simple Possession?
   Notes and Questions

1. Culpable Knowledge
   a. Proof of Knowledge
      Ervin v. Virginia
      Notes and Questions
   b. Presumptions Regarding Knowledge
      Missouri v. Bell
      Notes and Questions
   c. Knowledge of the Substance’s Nature
      (i) Proof of Knowledge About a Substance’s Nature
         Missouri v. Paul
         Notes and Questions
      (ii) Knowledge of the Law
         Iowa v. Heinrichs
         Notes and Questions

2. Control
   Regan v. Wyoming
   Notes and Questions
   a. Control and Ownership
      Oregon v. Fries
      Iowa v. Bash
      Notes and Questions
   b. Duration of Control
   c. Proof of Control
      (i) Exclusive Access
         In Re R.L.H.
         Notes and Questions
      (ii) Non-exclusive Access
         Iowa v. Cashen
         Notes and Questions
         Iowa v. Henderson
         Notes and Questions
      (iii) Joint Possession
         Folk v. Maryland
         Notes and Questions
3. Marijuana
   Notes and Questions
4. Defenses
   a. Necessity
      *United States v. Randall*
      Notes and Questions
      *United States v. Oakland Cannabis Buyers’ Coop.*
      Notes and Questions
   b. Innocent Possession
      Notes and Questions
   c. Unwitting Possession
      *City of Kennewick v. Day*
      Notes and Questions
B. What Are the Sanctions for Simple Possession?
   1. Criminal Sanctions
      *North Carolina v. Mitchell*
      Notes and Questions
   2. Civil Sanctions
      *United States v. One Clipper Bow Ketch Nisku*
      Notes and Questions
      *Illinois ex rel Neal v. Ryan*
      Notes and Questions
   3. Sanctions Under Decriminalization
   4. Actual Versus Authorized Sanctions
      Notes and Questions

CHAPTER 4
The Regulation of Marijuana Users in Legalization Regimes

A. Who Is Allowed to Possess and Use Marijuana?
   1. Medical Marijuana Regimes
      a. Qualifying Condition
         *Washington v. Fry*
         Notes and Questions
         *California v. Spark*
         Notes and Questions
      b. Recommendation
         *Washington v. Shepherd*
         Notes and Questions
      c. Registration
         Notes and Questions
d. Other Limitations on Eligibility 119
   (i) Residency 119
   (ii) Age 119
   (iii) Criminal History 120
       Notes and Questions 121
2. The Special Case of CBD States 123
   Notes and Questions 124
3. Recreational Marijuana States 124
   Notes and Questions 125
B. What Limitations Are Imposed on the Possession and Use of Marijuana? 125
1. Quantity 126
   Notes and Questions 127
2. Purpose 129
   Notes and Questions 130
3. Type 131
   Notes and Questions 131
4. Place 133
   a. Public 133
      New York v. Jackson 134
      Notes and Questions 139
   b. Schools 141
      Notes and Questions 142
5. Driving Under the Influence 143
   a. DUH-Impaired 143
      Pennsylvania v. Hutchins 144
      United States v. Davis 146
      Notes and Questions 149
   b. DUH-Per Se 149
      (i) What Is Marijuana for Purposes of DUI-per se Laws? 150
         Arizona ex rel. Montgomery v. Harris 150
         Notes and Questions 154
      (ii) Proof of the Presence of Marijuana 154
         Illinois v. McPeak 155
         Notes and Questions 156
6. Other, Forgotten(?) Crimes 157
   California v. Young 157
   Notes and Questions 159
C. Legal Protections 161
1. Search 161
   a. Recreational Marijuana States 162
      Alaska v. Crocker 162
      Notes and Questions 166
CHAPTER 5
Policy Toward Marijuana Users

A. What Are Marijuana’s Benefits?
1. Medical Benefits
   a. The DEA’s Position on Marijuana’s Medical Benefits
      Department of Health and Human Services, Basis for the
      Recommendation for Maintaining Marijuana in Schedule I
      of the Controlled Substances Act
      Notes and Questions
   b. The States’ Positions on Marijuana’s Medical Benefits
      Notes and Questions

2. Recreational Benefits
   Douglas Husak, For Drug Legalization
   Notes and Questions

B. What Are Marijuana’s Harms?
1. The Harms of Marijuana Use
   Department of Health and Human Services, Basis for the
   Recommendation for Maintaining Marijuana in Schedule I of
   the Controlled Substances Act, (cont’d)
   Notes and Questions
2. Which Harms Should Inform Policy?
   Ravin v. Alaska
   Notes and Questions

C. How Do Policymakers Influence Marijuana Use (or Its Harms)?:
1. Law’s Impact on Overall Use
   a. Legal Sanctions
      Notes and Questions
b. Marijuana Prices 230  
   Notes and Questions 231  
c. Transaction Costs 231  
   Notes and Questions 232  
d. Individual Attitudes Toward Marijuana 232  
   (i) Media Campaigns 233  
      Notes and Questions 234  
   (ii) Signaling Through Law 235  
      Notes and Questions 236  
e. Social Norms 236  
   Notes and Questions 238  
f. Review 239  
   Notes and Questions 239  
2. Law’s Impact on Unapproved Use 239  
   Notes and Questions 240  
3. Driving Harms and DUI 241  
   Andrea Roth, The Uneasy Case for Marijuana as Chemical Impairment Under a Science-Based Jurisprudence of Dangerousness 243  
   Notes and Questions 244  
D. What Are the Costs of Different Regulatory Approaches? 245  
   1. Fiscal Costs 245  
      Notes and Questions 246  
   2. Liberty Costs 247  
      a. Prohibition Regimes 248  
         American Civil Liberties Union, The War on Marijuana in Black and White 248  
         Notes and Questions 249  
      b. Legalization Regimes 249  
         Notes and Questions 250  

CHAPTER 6
Authority over Marijuana Users 253
A. What Is the Scope of the Federal Government’s Authority over Marijuana Possession and Use? 253  
   1. Federalism Constraints 253  
      Gonzales v. Raich 254  
      Notes and Questions 255  
   2. Due Process Constraints 266  
      Raich v. Gonzales 266  
      Notes and Questions 267  
B. How Is Authority Allocated Within the Federal Government? 272  
   1. The Executive Branch’s Scheduling Authority 272  
   2. Limits Imposed by Treaty Obligations 274
3. The Criteria for Re-Scheduling 275
4. The Role of the DEA and FDA 275
   Notes and Questions 276
C. What Authority Do the States Have over Marijuana Possession and Use? 277
   1. Preemption Constraints 278
      Robert A. Mikos, On the Limits of Supremacy: Medical Marijuana and the States’ Overlooked Power to Legalize Federal Crime 278
      Notes and Questions 282
   2. Right to Travel Constraints 283
      a. Denying Non-residents the Benefits of State Law 283
         Brannon Denning, One Toke over the (State) Line: Constitutional Limits on ‘Pot Tourism’ Restrictions 284
         Notes and Questions 287
      b. Refusing to Apply Other States’ Laws 288
         Notes and Questions 289
      c. Regulating Residents’ Out-of-State Conduct 289
         Notes and Questions 289
D. How Is Authority Allocated Within the States? 290
   1. Ballot Initiatives 291
      Michael Vitiello, Why the Initiative Process Is the Wrong Way to Go: Lessons We Should Have Learned from Proposition 215 291
      Notes and Questions 293
   2. Localism 295
      a. Local Regulations that Are Stricter than State Regulations 295
         City of North Charleston v. Harper 295
         Notes and Questions 297
      b. Local Regulations that Are More Permissive than State Regulations 297
         Joslin v. Fourteenth District Judge 298
         Notes and Questions 298
         Ruggles v. Yagong 299
         Notes and Questions 300

PART III
MARIJUANA SUPPLIERS 301

CHAPTER 7
The Regulation of Marijuana Suppliers in Prohibition Regimes 303
   A. What Are Marijuana Supply Offenses? 304
      1. Manufacture 304
         Notes and Questions 304
         a. Manufacture of Hash Oil 305
            Utah v. Horsley 305
            Notes and Questions 306
B. What Are the Criminal Sanctions for Supplying Marijuana? 362
   1. Calculating Sentences 362
      Notes and Questions 366
   2. Measuring Quantity 367
      a. THC Content 367
      b. Weight of Material That Is Not Marijuana 367
      c. Weight of Marijuana Plants 368
         Notes and Questions 369
      d. What Is a “Plant”? 371
      e. Aggregating Quantities 371
      f. Knowledge of Quantity 372
   3. Sentencing for “Fake” Marijuana 373
      Conner v. Indiana 374
      Notes and Questions 375
   4. Aggravated Circumstances 375
      Notes and Questions 377
   5. What Sentences Are Actually Imposed? 378
      Notes and Questions 379
C. What Are the Civil Sanctions for Supplying Marijuana? 379
   1. Forfeiture 379
      a. Property Subject to Seizure 379
         Notes and Questions 380
      b. Forfeiture Procedures 381
         (i) Criminal Forfeiture 381
            Notes and Questions 381
         (ii) Civil Forfeiture 382
            United States v. $61,200.00 in U.S. Currency, More or Less 383
               Notes and Questions 386
      c. Defenses to Forfeiture Actions 386
         (i) The Eighth Amendment 387
            United States v. Levesque 387
            Notes and Questions 389
         (ii) The Innocent Owner Defense 389
            von Hofe v. United States 390
            Notes and Questions 392
      d. The Appeal of Civil Forfeiture 394
         United States v. Real Property and Improvements
         Located at 1840 Embarcadero, Oakland, California 394
         Notes and Questions 395
2. Taxes
   a. Special Marijuana Taxes
   b. Section 280E
      
      Benjamin M. Leff, Tax Planning for Marijuana Dealers
      Notes and Questions

3. RICO
   
   Robert A. Mikos, A Critical Appraisal of the Department of
   Justice’s New Approach to Medical Marijuana
   Safe Streets Alliance v. Alternative Holistic Healing, LLC
   Notes and Questions

4. Trademark (and Other Intellectual Property)
   In re Morgan Brown
   Notes and Questions

CHAPTER 8
The Regulation of Marijuana Suppliers in Legalization Regimes

A. Personal Supply
   1. May Users Cultivate Their Own Marijuana?
      Notes and Questions
   2. What Limits Are Imposed on User Cultivation?
      Notes and Questions
   3. May Users Grow Collectively?
      California v. Colvin
      Notes and Questions
   4. May Lawful Users Distribute Marijuana to Other Lawful Users?
      Michigan v. McQueen
      Notes and Questions
   5. May Anyone Assist Patients with the Cultivation and Handling of
      Marijuana?
      a. Who May Serve as a Caregiver?
         California v. Mentch
         Notes and Questions
      b. What Limits Are Imposed on Caregivers?
         (i) Number of Patients
         Washington v. Shupe
         Notes and Questions
         (ii) Compensation
         Notes and Questions
   6. What Legal Protections Do Users and Caregivers Enjoy as Suppliers?

B. Commercial Supply
   1. Who Is Allowed to Produce and Sell Marijuana Commercially?
      Notes and Questions
a. The Number of Licenses 445
   Notes and Questions 445
b. Who Can Get a License? 446
   Notes and Questions 447
c. The Role of Criminal History 447
   Notes and Questions 450
d. The Role of Residency 451
   Notes and Questions 452
e. Other Criteria 452
   (i) Non-profit Status 452
   Notes and Questions 453
   (ii) Geography 453
   Notes and Questions 454
2. What Regulations Do States Impose on Commercial Licensees? 455
   a. Vertical Integration 455
      Notes and Questions 456
   b. Product Testing, Labeling, and Packaging 456
      (i) Testing 456
      Notes and Comments 458
      (ii) Labeling and Packaging 458
      Notes and Questions 461
c. Sales 462
   Notes and Questions 463
d. Advertising 464
   Notes and Questions 465
e. Reporting 466
   Notes and Questions 467
3. How Are Licensees Disciplined? 468
   a. Investigations 468
      Notes and Questions 469
   b. Disciplinary Process 472
      Notes and Questions 474
c. Licensing Sanctions 475
      Notes and Questions 477
C. Government Supply 478
   Notes and Questions 479
D. Summary 480
   Notes and Questions 481
CHAPTER 9
Policy Toward Marijuana Suppliers 483
A. How Does the Regulation of Supply Impact Use? 483
   1. Supply Prohibitions and Marijuana Consumption 484
      a. Prohibition, Prices, and Consumption 484
      Notes and Questions 486
   xxi
b. The Magnitude of Prohibition’s Impact on Price and Consumption  
Jonathan Caulkins, Beau Kilmer, and Mark A.R. Kleiman,
Marijuana Legalization: What Everyone Needs to Know  
Notes and Questions  
2. Legalized Supply and Marijuana Use  
a. Marijuana Taxes  
Notes and Questions  
(i) Designing a Tax  
Jonathan P. Caulkins et al., Considering Marijuana  
Legalization: Lessons for Vermont and Other Jurisdictions  
Notes and Questions  
(ii) Evasion  
Robert A. Mikos, State Taxation of Marijuana  
Distribution and Other Federal Crimes  
Notes and Questions  
b. Product Packaging and Labeling Requirements  
Notes and Questions  
c. Marijuana Advertising Restrictions  
(i) Do Advertising Restrictions Violate the First Amendment?  
Alex Kreit, What Will Federal Marijuana Reform Look Like?  
Notes and Questions  
(ii) Alternatives to Restricting Advertising  
Blue Ribbon Commission on Marijuana Policy, Pathways  
Report: Policy Options for Regulating Marijuana  
in California  
Notes and Questions  
d. Regulations Affecting Industry Structure  
(i) Banning Commercial Supply  
Montana Cannabis Indus. Ass'n v. Montana  
Notes and Questions  
(ii) Licensing Rules Restricting Industry Concentration  
Notes and Questions  
(iii) Government-Owned and -Operated Marijuana Suppliers  
Jonathan P. Caulkins et al., Considering Marijuana  
Legalization: Lessons for Vermont and Other  
Jurisdictions (cont’d)  
Notes and Questions  
B. Regulatory Costs  
1. Fiscal Costs  
Notes and Questions  
2. Liberty Costs  
(i) Minority Participation in the Legal Marijuana Industry  
Amanda Chicago Lewis, How Black People Are Being  
Shut Out of America’s Weed Boom  
Notes and Questions
Notes and Questions 522

(ii) How Can States Boost Minority Participation in the Legal Marijuana Industry?

The Attorney General of Maryland, Office of Counsel to the General Assembly, Letter to Delegate Chris West, March 13, 2015 523

Notes and Questions 524

CHAPTER 10
Authority over Marijuana Suppliers 527

A. Can the President Stop Enforcing the Federal Marijuana Ban?

Sam Kamin, Prosecutorial Discretion in the Context of Immigration and Marijuana Law Reform: The Search for a Limiting Principle 528

Notes and Questions 531

B. Are State Licensing Laws and Similar Regulations Preempted by the Federal CSA?

1. An Introduction to Preemption

Robert A. Mikos, Preemption Under the Controlled Substances Act 533

2. The State Suit Against Amendment 64

States of Nebraska and Oklahoma v. State of Colorado, Complaint 535

Notes and Questions 544

C. May Local Governments Ban State-Approved Production and Distribution of Marijuana?

1. Introduction to Local Authority

Robert A. Mikos, Marijuana Localism 550

Notes and Questions 552

2. Why Have Courts Reached Different Conclusions Regarding Local Authority to Regulate Marijuana Supply?

a. The View that Local Bans Are Permitted

City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc. 553

Notes and Questions 558

b. The View that Local Bans Are Preempted

Ter Beek v. City of Wyoming 558

Notes and Questions 560

D. Who Should Regulate the Supply of Marijuana?

Robert A. Mikos, Marijuana Localism (cont'd) 561

Notes and Questions 568
PART IV
THIRD PARTIES

CHAPTER 11
The Regulation of Third Parties

A. Aiding and Abetting
   *Washington v. Gladstone*
   Notes and Questions

B. Conspiracy
   *Massachusetts v. Camerano*
   Notes and Questions

C. Financial Crimes
   1. Money Laundering
      a. Knowledge (and Willful Ignorance)
         *United States v. Campbell*
         Notes and Questions
      b. Designed to Conceal
         *United States v. Corchado-Peralta*
         Notes and Questions
   2. Use of Criminal Proceeds
      Notes and Questions

CHAPTER 12
The Law, Policy, and Authority Issues Confronting Professionals

A. Physicians
   1. May Physicians Be Sanctioned for Recommending Marijuana?
      *Conant v. Walters*
      Notes and Questions
   2. What Must Physicians Do to Make Valid Recommendations?
      Notes and Questions
   3. Are Physicians Willing and Able to Recommend Marijuana?
      Notes and Questions
   4. Are Some Physicians Too Willing to Recommend Marijuana?
      *Colorado Office of The State Auditor, Medical Marijuana Regulatory System, Part II*
      Notes and Questions

B. Attorneys
   1. What Services May Attorneys Provide to Marijuana Users and Suppliers?
      a. The Restrictive Interpretation of Rule 1.2
         *Ohio Supreme Court, Board of Professional Conduct, Ethical Implications for Lawyers under Ohio’s Medical Marijuana Law*
         Notes and Questions
b. The Permissive Interpretation of Rule 1.2

New York State Bar Association Committee on Professional Ethics, Counseling Clients in Illegal Conduct: Medical Marijuana Law 631
Notes and Questions 634

2. May Attorneys Use or Supply Marijuana? 635
Notes and Questions 637

3. Can Federal Courts Punish Attorneys for Assisting Marijuana Users and Suppliers?
   Eli Wald et al., Representing Clients in the Marijuana Industry: Navigating State and Federal Rules 639
   Notes and Questions 644

CHAPTER 13
The Law, Policy, and Authority Issues Confronting Businesses 645
A. Contracting Parties, Generally 645
   1. Will Courts Enforce Contracts with Marijuana Suppliers?
      Hammer v. Today’s Health Care II, Co. 646
      Notes and Questions 648
      Green Earth Wellness Ctr., LLC v. Atain Specialty Ins. Co. 649
      Notes and Questions 651
   2. What Are the Consequences If Contracts Are Unenforceable?
      Lake Scheuer, Are “Legal” Marijuana Contracts “Illegal”? 652
      Notes and Questions 654

B. Landlords 655
   1. May Landlords Rent Property to Tenants Who Use or Supply Marijuana on It?
      Notes and Questions 656
   2. Can Landlords Ever Be Sanctioned for Refusing to Rent to Marijuana Users?
      Notes and Questions 660

C. Employers 662
   1. Are Employers Ever Required to Accommodate and Employee’s Marijuana Use?
      a. Express Duty to Accommodate 662
      Notes and Questions 663
      b. Implied Duty to Accommodate 665
      Ross v. RagingWire Telecommunications, Inc. 665
      Notes and Questions 671
   2. Is a State-Imposed Duty to Accommodate Marijuana Use Preempted by Federal Law?
      Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries 673
      Notes and Questions 678
D. Banks

1. May Banks Do Business with the Marijuana Industry? 681
   Julie Andersen Hill, Banks, Marijuana, and Federalism 681
2. Should Banks Be Allowed to Do Business with the Marijuana Industry? 687
   Notes and Questions 688
3. Who Ultimately Decides the Marijuana Banking Question 689
   Julie Andersen Hill, Banks, Marijuana, and Federalism (cont’d) 690
   Notes and Questions 694

CHAPTER 14
The Law, Policy, and Authority Issues Confronting Government Officials 697

A. Could State Officials Be Criminally Prosecuted Under the Federal CSA? 697
   1. ... for Growing and Selling Marijuana? 698
      United States v. Rosenthal 699
      Notes and Questions 701
   2. ... for Returning Marijuana? 704
      Office of the Attorney General, State of Michigan, Opinion 705
      The City of Garden Grove v. Kha 706
      Notes and Questions 708

B. Could State Officials Be Held Civilly Liable? 710
   County of Butte v. Superior Court 711
   Notes and Questions 714

C. Can State Officials Stop the Federal Government from Accessing Information They Collect About Marijuana Users/Suppliers? 716
   United States v. Michigan Department of Community Health 716
   Notes and Questions 720

D. Could State Agencies Lose Federal Funding because of State Reforms? 722
   1. Schools 723
      a. Higher Education 723
         Notes and Questions 724
      b. Primary Schools (K-12) 725
         Colorado Legislative Council, Student Marijuana Use at School 725
         Notes and Questions 726
   2. Public Housing 727
      Helen R. Kanovsky, Medical Use of Marijuana and Reasonable Accommodation in Federal Public and Assisted Housing 727
      Notes and Questions 731

Table of Cases 735
Index 741

xxvi
Preface

This is a first-of-its-kind textbook that explores the fascinating legal issues that surround marijuana users, their suppliers, and the sundry third parties (physicians, employers, investors, etc.) who deal with them. It surveys the competing approaches jurisdictions have adopted toward regulating marijuana, the policies behind those approaches, and the power that various federal, state, and local government actors have to pursue each of them. Chapter 1 provides more details about the content and features of the book and how it can be used in the classroom or as a reference work. It also explains why marijuana law and policy is such a worthwhile area of study, even for people who never intend to work in this field.

Although marijuana can be a divisive subject, the book strives to take an evenhanded approach to all of the issues it covers. It fully explores the different sides to the controversies surrounding marijuana law and policy, not to persuade the reader that any one position is necessarily correct, but to foster lively discussion and hone the reader’s ability to think more critically about issues in the field. Through this evenhanded approach, I hope the book will help improve our discourse and decision-making concerning marijuana policy, wherever that may lead us.

If you have any feedback on the book, or if you are interested in teaching about any aspect of marijuana law and policy, I would be happy to hear from you.

Robert A. Mikos
March 2017
Nashville, Tennessee
robert.mikos@vanderbilt.edu