



Understanding the Dynamics of Medical Marijuana Legalization in the United States

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Marijuana policy in the United States continues to rapidly expand and evolve. On June 26, 2018, Oklahoma, a quite conservative state, adopted medical marijuana through a primary ballot initiative that received roughly 57% of the vote. Given this, one might ask, why hasn't medical marijuana been adopted in every state — and why have deep red states like Oklahoma and North Dakota passed medical marijuana laws before bluer states like Wisconsin and Virginia?

Even though the federal government prohibits marijuana use, thirty-one states have written their own medical marijuana policies, dating back to California in 1996. There are three factors that help to explain why medical marijuana has spread to some states and not others — and some of them actually favor enactments in less liberal states.

State Influences on Medical Marijuana Laws

Understandably, a state's politics and culture affect whether it adopts a medical marijuana law — and many such changes were adopted first in more liberal and less religious states like California. However, there are also institutional features that affect whether or not a state passes a medical marijuana law. Institutional rules allowing popular initiatives, or direct democracy in the form of ballot initiatives, have allowed citizens to circumvent legislature that are disinterested in passing, or even considering, medical marijuana laws.

Recently, certain more conservative states with such institutional procedures — such as Oklahoma and North Dakota — have passed medical marijuana laws by initiative. And other states like Ohio saw action by the legislature only when a threat of an initiative was looming. Meanwhile, several states with more liberal populations have not taken action, because they do not have institutional provisions for citizen initiatives. By now, in fact, of the 27 states without medical marijuana provisions, only four have the direct initiative available to citizens. Citizen supporters in such states are left without levers to advance marijuana laws apart from willing action by the legislature and governor.

Changes over Time

Not all medical marijuana laws are the same. For example, state laws vary on whether they require patients to register, whether they allow home cultivation of marijuana, and whether they authorize local dispensaries. They also vary in their controls of tetrahydrocannabinol (THC), the component of marijuana that produces a high, and in their rules about whether patients can smoke marijuana or use it only in other prepared forms.

As medical marijuana laws spread across many states, they have tended to become more restrictive in some ways, and less restrictive in others. On one hand, laws have tended to cover more medical conditions as they were passed and reformed in states that adopted earlier. But, some states, like Pennsylvania and Ohio, have more restrictions on the types of marijuana available. The North Dakota government even acted to place greater restrictions on the medical marijuana program approved directly by voters; and Utah is poised to do the same in the wake of the 2018 election. Stricter regulations made medical marijuana more palatable to more conservative states, facilitating some spread of this type of measure.

New Adoptions Add to the Legitimacy of Marijuana Reforms

Each new adoption lessens the negative association once attached to liberalizing marijuana laws. Although the vast majority of early adoptions occurred on the West Coast, followed by New England, medical marijuana laws have slowly spread to more conservative states — making this kind of legal change appear less extreme and more palatable to citizens in states still without medical marijuana laws.

Because states are more likely to adopt medical marijuana provisions after ideologically similar states do so, more conservative adopting states can pave the way for adoption in other conservative states. Time will tell whether recent adoptions in states like West Virginia, Arkansas and Oklahoma signal wide acceptability in other conservative states.

State Adoptions Lead to Pressure to Change Federal Policies

Research on policy diffusion demonstrates that as neighboring jurisdictions adopt a policy — whether states, provinces, or countries — the pressure for adoption increases among lagging jurisdictions. This has been true with medical marijuana across the U.S. states, but the pressures go even further — to effect national possibilities. Even though the U.S. federal government has sent mixed messages about its position, each new adoption casts public light, often unfavorable, on the federal government's reluctance to make nationwide changes.

Former Trump administration Attorney General Jeff Sessions — a prohibitionist — rescinded guidance from the previous administration of President Barack Obama that had reduced federal pressures on states where marijuana was legalized. Instead, Sessions instructed U.S. attorneys to fully enforce federal prohibitions. But it is not clear that this Trump reversal under Sessions was ever tenable.

During his 2016 presidential campaign, Donald Trump indicated that he would allow states to choose their own marijuana policies. In recent months, the Trump Administration has sought comments on marijuana classification and federal lawmakers have been more vocal about reforming federal policy. Pressure for federal action to change marijuana prohibition will only increase as both recreational and medical cannabis laws spread across more and more states.

Read more in A. Lee Hannah and Daniel J. Mallinson "Defiant Innovation: The Adoption of Medical Marijuana Laws in the American States" *Policy Studies Journal*, 46, no. 2, (2018): 402-423.