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A Comparative Analysis of Cannabis Legislation in the United States and Canada: Medical Exemptions, Recreational Use, The Future of Cannabis Legalization

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CUSLI STUDENT RESEARCHER REPORTS: CANNABIS LEGALIZATION IN CANADA AND THE U.S.

The following summaries on comparative aspects of cannabis legalization in Canada and the U.S. were prepared by first year students at the University of Western Ontario Faculty of Law in the course of a CUSLI Student Forum on the subject of “Cannabis Legalization and Regulation in Canada and the U.S.” held on Wed., Nov. 29, 2023. The Editors would like to thank Mathie Smith of the CUSLI Student Committee for assisting with the consolidation and editing of these summaries.

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I. A COMPARATIVE ANALYSIS OF CANNABIS LEGISLATION IN THE UNITED STATES AND CANADA

Ambertari Cape

Cannabis legislation in North America can be traced back to the War on Drugs—a set of policies and initiatives dating back to the 1970s aimed at reducing illegal drug use. Though cannabis as a drug has a history of being criminalized, in recent years there have been shifting attitudes toward recreational and medical cannabis use in North America.

On October 17th, 2018, the Government of Canada passed Bill C-45, which legalized cannabis across the entire country.¹ However, evolving dynamics and conflicting laws have made cannabis regulation complex in nature. Canada and the United States have distinctive ways of regulating drug use. In Canada, federal law regulates the use of drugs whereas in the U.S. many drugs are regulated state-to-state. While cannabis is legal in Canada, some U.S. states still have a complete ban on it. This report will discuss the progression of cannabis legalization, starting with the drug's complete ban in North America. It will then suggest alternative approaches for a system of uniform regulation in the United States.

Before the War on Drugs movement, both Canada and the U.S. had misconceptions about the effects of cannabis use, specifically among new immigrants. There was a widely held belief that minorities used cannabis and that it produced side effects amongst users that would inevitably threaten the fabric of each respective country. As a result, Canada and the United States both enacted legislation that altogether banned the drug.

Cannabis' classification as a Schedule I drug in North America played a pivotal role in its prohibition.² A drug classified as a Schedule I substance is not approved for medical use and has a high potential for abuse and addiction.³ As of today, cannabis is considered a Schedule I drug in the United States. The United States Drug Enforcement Administration recognizes cannabis to be a highly controlled substance similar to heroin, cocaine and LSD. As a result, there are generally strict restrictions on its use and distribution across the U.S..

Since the enactment of Bill C-45 in Canada, cannabis is no longer a Schedule I controlled substance. Before attitudes shifted toward cannabis legalization, Canada's federal government established policies to control the drug's use by means of statute. In 1923, cannabis was added to the prohibited list of drugs in the *Opium and Drug Act*.⁴ The *Opium and Drug Act* was repealed in 1961 by the *Narcotic Control Act*, which set penalties for the simple possession of cannabis to

¹ The Cannabis Act, S.C. 2018, c 16, s 15 (Can.).

² *Drug Scheduling* (Jul. 10, 2018), <https://www.dea.gov/drug-information/drug-scheduling> (last visited Mar. 1, 2024).

³ *Id.*

⁴ Robin Mackay & Karin Phillips, *The Legal Regulation of Marijuana in Canada and Selected Other Countries*, Can. Library of Parliament, 2016, at 6.

include a maximum fine of \$1,000 and/or imprisonment for up to six months.⁵ In 2003 the Supreme Court of Canada had to determine the constitutionality of the Act. In the case of *R v. Malm-Levine; R v. Caine*,⁶ two individuals, David Malm-Levine and Victor Eugene Caine, were found to be guilty of simple possession and trafficking of cannabis. The respondents argued that their prosecution for simple possession violated their Section 7 right to life, liberty and security and their Section 15 right to equal protection under the Canadian Charter of Rights and Freedoms. At the time, cannabis was deemed to be harmful to the public and thus regulated by criminal law. The Court found that the aim of protecting vulnerable groups and preventing harm that would arise from consuming cannabis were sufficient reasons to criminalize cannabis under the *Narcotic Control Act*.⁷ The decision upheld the constitutionality of the cannabis prohibition based on the fact that restrictions under the *Narcotic Control Act* fit within criminal law powers to maintain peace, safety, order and health in Canadian society.

In the U.S. federal policies such as the *Marijuana Tax Act* and the *Controlled Substances Act (CSA)* were enacted to prohibit cannabis. As previously mentioned, cannabis is not permitted federally under the *CSA*. However, in recent decades 24 states have passed legislation that allows adults to use cannabis recreationally. In 1996 California became the first state to legalize cannabis for medical use.⁸ Yet even with the drug's legal status for medical use under state law there was no guarantee that the drug would be accessible for medical purposes.

In 2001 the case of *U.S. v. Oakland Cannabis Buyers Cooperative* before the U.S. Supreme Court highlighted the conflict between federal and state regulations, emphasizing that there was no medical necessity exception to the *CSA*'s prohibitions. In 1996 California passed the *Compassionate Use Act* which made it legal for patients to possess cannabis for medical purposes. Oakland Cannabis, a medical cannabis dispensary, began distributing medical cannabis to qualified patients and under state law their activities were legal. Despite this permission the U.S. sued Oakland Cannabis, claiming it violated the *CSA*. Oakland Cannabis attempted to rely on the "medical necessity" defence, but the U.S. District Court rejected its claim.⁹ The case eventually went to the U.S. Supreme Court. The Court held that there was no medical necessity exception to the *CSA*'s prohibitions on the manufacturing and distribution of cannabis.

Canada and the U.S. have distinct approaches to cannabis prohibition. Canada's federal system regulates drug use uniformly across provinces upon legalization while the U.S. deals with drug regulation on a state-by-state basis. As seen in the *Oakland* case, conflicting federal and state laws pose challenges to achieving overall consistency in cannabis regulation in the U.S. Despite shifting attitudes towards decriminalization, some U.S. states maintain complete bans on cannabis to this day. These states struggle with the complexities of navigating

⁵ *Id.*

⁶ 2003 SCC 74 (Can.).

⁷ *Id.*

⁸ Suzanne Ryan-Ibarra, Marta Induni & Danielle Ewing, *Prevalence of Medical Marijuana Use in California, 2012*, 34, *Drug and Alcohol Rev.*, 141, 141 (2015).

⁹ *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001).

conflicting federal and state laws in the ever-evolving landscape of cannabis regulation.

II. MEDICAL EXEMPTIONS

Yousef Shaarawy

Canada

In Canada the first medicinal exemption to the prohibition on cannabis use was the s. 56 exemption in the *Drugs and Controlled Substances Act*.¹⁰ The Act provided that the Minister could at his/her discretion grant an exemption to any person or group of persons or for any groups of substances if, in the Minister's opinion, the exemption would be for medical or scientific reasons or otherwise for public benefit.

R v. Parker

The s. 56 exemption was challenged in the case of *R v. Parker*¹¹ decided in 2000. In *Parker* the accused suffered from epilepsy which caused severe, frequent, and life-threatening seizures.¹² Regular medication was only moderately successful. However, the accused found that cannabis was more effective medication for his seizures. The trial judge ruled in favor of Parker and read in a new exemption. The Crown appealed the decision.¹³

The Ontario Court of Appeal held that the prohibition violated the accused's rights to liberty and security because it forced him to choose between the commission of a crime and inadequate medical treatment.¹⁴ The Court also found that the prohibition interfered with the accused's physical and psychological integrity and thereby violated his right to security.¹⁵ Finally, it determined that the prohibition was both overbroad and arbitrary as the Minister had discretion to decide who received an exemption and who did not, and the Act applied to a lot of behavior that was outside the intended behavior.¹⁶

However, the Court also held that the trial judge erred in reading in an exemption.¹⁷ It determined that the exemption was significant enough that it fell within Parliament's prerogative and therefore the trial judge should not have read in the exemption.¹⁸ Instead, the Court decided that the exemption was of no force

¹⁰ Controlled Drugs and Substances Act, S.C. 1996, c 19, s 56 (Can.).

¹¹ *R v. Parker*, 2000 CanLII 5762 (Can. Ont. C.A.).

¹² *Id.* at paras 13-20.

¹³ *Id.* at paras 5-8.

¹⁴ *Id.* at paras 105-111.

¹⁵ *Id.* at paras 92-97.

¹⁶ *Id.* at paras 152-153.

¹⁷ *Id.* at para 195.

¹⁸ *Id.* at para 198.

or effect. However, the Court suspended its decision for a year until Parliament could enact a better regulatory scheme.¹⁹

Marijuana Medical Access Regulations

The legislature responded to *Parker* by passing the *Marijuana Medical Access Regulation (MMAR)*.²⁰ The *MMAR* was enacted in 2001 and allowed individuals, with the authorization of their healthcare professional, to have access to medical marijuana by producing it themselves, designating someone to produce it for them, or purchasing it from Health Canada. The *MMAR* was repealed in 2014 and replaced with the *Marijuana for Medical Purposes Regulations (MMPR)*.²¹

Marijuana for Medical Purposes Regulations

The *MMPR* provided the regulations to create the conditions for a commercial industry for the production of medicinal marijuana. The stated goal of the regulation was to provide quality controls on the production of marijuana. It also stipulated that only dried marijuana could be used or produced for consumption. This legislation was challenged in *R v. Smith*.²²

R v. Smith

Smith was decided by the Supreme Court of Canada in 2015. In *Smith* the Court found that the prohibition on non-dried forms of cannabis was arbitrary and overbroad.²³ The Court also found that the prohibition violated the rights of producers and the rights of patients seeking non-dried forms of cannabis.²⁴ The majority therefore decided to dismiss the appeal.²⁵ It held that the prohibition against non-dried forms of cannabis was of no force or effect.²⁶ This decision allowed individuals to purchase other forms of cannabis, such as edibles and oils, which might be more convenient to use.

Allard v. Canada

In *Allard v. Canada*²⁷ in 2016 the Federal Court held that the way in which the *MMPR* restricted the availability and access to medicinal marijuana was a violation of the plaintiff's s.7 rights to liberty and security under the *Canadian*

¹⁹ *Id.* at para 210.

²⁰ Marijuana Medical Access Regulations, SOR/2001-227, as repealed by Marijuana for Medical Purposes Regulation, SOR/2013-119, s 267 (Can.).

²¹ Marijuana for Medical Purposes Regulations, SOR/2013-119, s 267, as repealed by Access to Cannabis for Medical Purposes Regulations, SOR/2016-230, s 281 (Can).

²² 2015 SCC 34 [2015] (Can.).

²³ *Id.* at para 28.

²⁴ *Id.* at para 17.

²⁵ *Id.* at paras 33-34.

²⁶ *Id.* at para 30.

²⁷ [2016] 3 F.C.R. 303 (Can.).

Charter of Rights and Freedoms. The Court determined that there was no rational connection between the stated objective of the restriction and the legislation. Furthermore, the Court also held that even if there was such an objective the legislation was still overbroad and therefore unconstitutional.²⁸ In particular, the Court held that it was unconstitutional to prohibit individuals with medical exemptions from growing their own marijuana.²⁹

Access to Cannabis for Medical Purposes Regulations

Parliament finally responded to the above-mentioned decisions by passing the *Access to Cannabis for Medical Purposes Regulations (ACMR)*.³⁰ The *ACMR* kept the same regulations for the commercial production of marijuana but also allowed individuals to grow their own cannabis. It also expanded the list of allowed cannabis products.

United States

In the U.S. the United States Supreme Court decided in *Gonzalez v. Raich*³¹ that the Court did not have the authority to grant an exemption for a substance that the federal legislature sought to regulate. This holding raised issues since some states, including California, had already legalized a medicinal exemption. Thus, individuals faced the issue that they could be acting legally with regards to state legislation but held liable under federal law. Nevertheless, today there are medicinal exemptions in place for cannabis use in 38 states.

III. RECREATIONAL USE

Nigel Chan

Recreational use cannabis was legalized with similar methodologies in Canada and the U.S. Both countries both have legalized recreational use cannabis completely through statute. As mentioned above, the most notable difference in regulatory approach between the two countries is the federal nature of Canada's *Criminal Code* in contrast to the state-by-state regulatory framework adopted by the U.S.. Canada has a single federal *Criminal Code* that all provinces and territories must abide by, whereas generally speaking in the U.S. the criminal codes of different states are an emanation of the respective state legislatures. This difference is reflected in cannabis legalization, which only certain U.S. states have followed for recreational use. A notable byproduct of legislative legalization is that there is little to no common law consideration. The governments involved instead try their utmost to be comprehensive in their legislation so as to leave nothing to question.

²⁸ *Id.* at 306-307.

²⁹ *Id.* at 307-308.

³⁰ Access to Cannabis for Medical Purposes Regulations, SOR/2016-230 (Can.).

³¹ *Gonzalez v. Raich*, 545 U.S. 1 (2005).

Legalization by Statute: Canada and the U.S.

Canada: Bill C-45

Canada's legalization of cannabis for recreational purposes was relatively straightforward. It legalized recreational cannabis usage and growing in 2018 following Bill C-45 that thoroughly amended both the Canadian Criminal Code and specific statutes.³² The amending legislation was officially named "An Act respecting cannabis and to amend the *Controlled Drugs and Substances Act*, the *Criminal Code* and other Acts". It pursues four objectives: to prevent cannabis access by youth, to protect public safety with cannabis health requirements, to deter further criminal activity, and to reduce the regulatory burden of recreational cannabis on the justice system.³³

The amendments to the *Controlled Drugs and Substances Act* were the most significant changes brought about by Bill C-45. They outline what substances are considered 'controlled' (i.e. illegal) and their respective regulations.³⁴ Different schedules of drugs have different classifications and penal sentences attached to them. Schedule II is reserved for cannabis and is where organic and synthetic cannabis are listed as Items 1 and 2 respectively. Bill C-45 repealed Item 1 from Schedule II, effectively generally legalizing organic cannabis as a substance. By removing it as a controlled substance, the regulations against the recreational use of controlled substances in general would no longer apply to organic cannabis and derived products. For instance, under s. 4(1) of the *Controlled Drugs and Substances Act* "no person shall possess a substance included in Schedule I, II or III".³⁵ As organic cannabis was repealed from Item 1 of Schedule 2, possession of organic cannabis is no longer illegal, while possession of synthetic cannabis, which was not repealed, is still illegal.³⁶

Other considerations have had to be addressed to facilitate recreational cannabis legalization in Canada. These included adding provisions regarding the sale and production of recreational use cannabis. In addition to the *Controlled Drugs and Substances Act*, other statutes such as the *Criminal Code* and the *Non-smokers' Health Act* were amended. Part XII.1 of the *Criminal Code* of Canada, which dealt with illicit drug use literature and instruments, was repealed and the *Non-smokers' Health Act* was amended to prohibit the smoking and vaping of cannabis in federally regulated places and conveyances.³⁷ This amendment helped to further normalize recreational use cannabis. Cannabis literature and paraphernalia is legalized because recreational cannabis is legal and amending the

³² An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts Bill 2017, HC Bill [45] (Can.) [Cannabis Bill].

³³ *Id.* at cl 7.

³⁴ Controlled Drugs and Substances Act, S.C. 1996, c 19 (Can.).

³⁵ *Id.* at § 4(1).

³⁶ Cannabis Bill, *supra* note 32, at cl 204(2).

³⁷ Cannabis Bill, *supra* note 32, at cl 204(1).

Non-smoker's Health Act aligns cannabis' treatment much more closely with tobacco's regulatory treatment.

Through Bill C-45's details the objective of Canadian legislation is apparent. The different amendments applied to various Acts work concurrently to meet certain shared objectives. The age requirement set on recreational use cannabis fulfills the need to restrict cannabis use by youth. In addition to the health and safety regulations and resulting amendments to other Acts, public safety and deterrence of further criminal acts is also addressed. Through such ancillary changes the actual repeal of organic cannabis as a controlled substance can serve to reduce the strain on the criminal justice system.

United States: State-by-State Legalization

Despite the potential for significantly differing approaches to recreational cannabis legalization, most U.S. states have taken a similar process to Colorado, the first state to legal recreational cannabis usage.³⁸ An indication of this 'blueprint approach' is that taken by Ohio, the latest state to legalize recreational use, which, for the most part, has followed Colorado's approach closely. It shows the similar objectives and purpose of cannabis legalization that prevail between states, and ultimately, with Canada as well. At the same time, having state-by-state legislation allows for a more flexible approach based on the specific objectives and sentiments of the population in a given state. Such a tailored approach also allows for a more specialized plan that works around the existing law present in the state. There is the argument that this would be unnecessary if the U.S. followed Canada's federal legalization scheme, but the 'reserved' nature of constitutional jurisdiction in the U.S. (i.e. that any powers not specifically given to the federal government or withheld from the states, are reserved to the states) prevents that outcome.

A comparison of state approaches to recreational cannabis legalization using Colorado and Ohio as examples is instructive. Colorado enacted Amendment 64 while Ohio enacted the "Act to Control and Regulate Adult Use Cannabis".³⁹ Other states such as Washington used bills to legalize recreational use as was the case in Canada, or in some instances, other means. Colorado and Ohio highlight how comparable legal methodologies were used while still maintaining their specific objectives required by unique state environments. Both states employed a ballot initiative that polled whether to legalize recreational cannabis use from eligible voters. Both states also had much of the same objectives when public support was received: to legalize cannabis with an emphasis on excluding minors while putting in place a framework for business regulation and safety.⁴⁰ The flexibility of each state is especially noted when considering where they directed their respective cannabis tax proceeds. Colorado opted to focus on youth and substance abuse whereas Ohio directed the proceeds towards social equity, community funding and addiction treatment. This difference highlights the benefits of a tailored approach.

³⁸ COLO. CONST. amend. LXIV.

³⁹ H.B. 628, 135th Gen. Assemb., Reg. Sess. (Ohio 2022).

⁴⁰ "Colorado General Assembly" Colorado General Assembly. <https://leg.colorado.gov>.

The process of legalization is also where a more marked difference is seen. States have pre-existing legislation that needed to be changed in order to facilitate the legalization of recreational cannabis, and thus needed adaptive approaches to the issue of recreational cannabis legislation. Colorado chose to amend its state criminal law to legalize and decriminalize recreational cannabis usage. For example, Colorado's provisions prohibiting excess possession during the medical cannabis era were replaced with a minor possession provision.⁴¹ This amendment had the dual purpose of allowing possession of larger amounts and changing the regulatory focus to emphasize exclusion for minors, which was now required. By comparison, Ohio chose to add entire sections to Ohio's criminal statutes, an example being the inclusion of which forms of cannabis would be legal for adult use.⁴² Regardless of the methodology chosen and specific demands from the state, a pattern can still be seen with recreational cannabis legalization between different states and Canada.

Comparisons between Canada and the U.S.

The resemblance between the ways in which Canada and the U.S. legalized recreational cannabis is striking. Although Canada enacted a single federal bill that regulates cannabis usage according to a uniform federal standard, in practice individual U.S. states followed a closely related process for implementation as well. In the main U.S. states pursued a mixture of ballot initiatives, new legislation and amendments. On the whole, Canada's process was much more generalized as it was a federal bill. Despite these differences, the objectives pursued by both countries in recreational cannabis legalization were almost identical. At the forefront was safe, legal use by adults, exclusion of minors, and some variation in ancillary regulatory goals (e.g. equity and diversity, treatment and rehabilitation).

IV. THE FUTURE OF CANNABIS LEGALIZATION

Cameron Stimac

Looking into the future, let's examine what nationwide legalization of cannabis in the U.S. would look like and what the likelihood is of such a sweeping reform taking place.

Such a development would solve several legacy issues that legal cannabis retailers face today even in legal weed states due to the continuing inconsistency between federal and state legislation. Federally cannabis remains classified as a Schedule I drug under the Controlled Substances Act (*CSA*) in the U.S., meaning that it is determined to have a high potential for abuse and no accepted medical use. This determination prohibits its use for any purpose. Despite such a prohibition, U.S. federal law is generally not enforced against the possession,

⁴¹ COLO. REV. STAT. § 18-18-403.5 (2023).

⁴² OHIO REV. CODE § 3780.04 (2023).

cultivation, or intrastate distribution of cannabis in states where such conduct has been legalized.

One outstanding question is the issue of taxation. In 1975 a Minneapolis man, Jeffery Edmondson, attempted to write off \$105,300 in standard business expenses on his taxes. He had accrued these costs while self-employed as a drug dealer, retailing primarily in cocaine, amphetamines and marijuana. The IRS audited and denied Edmondson's claims, compelling Edmondson to challenge the decision in U.S. Tax Court. The judge in *Edmondson v. Commissioner* (1981) found in favor of Edmondson and allowed him to recoup most of his expenses.⁴³ In response, Congress passed *Internal Revenue Code s. 280E* (1982) the following year.⁴⁴ This section prevents businesses that traffic in Schedule I or Schedule II controlled substances from claiming standard business deductions.

Section 280E still exists today and prevents even legal marijuana retailers in states which have fully legalized cannabis from claiming standard business deductions on their taxes. According to the Forbes article titled "Legal Cannabis Companies Pay Insane Tax Rates Thanks To A Minnesota Speed Dealer," the lack of available tax relief means legal cannabis retailers in the U.S. are taxed "anywhere between 60% and 100% of profits" as a result. The same article went on to cite the effects of the 280E rule on the legal cannabis market as the reason that "keeps the illicit cannabis market alive" in weed-legal states in the U.S.

Federal legalization of cannabis would also solve a second question the legal cannabis industry in the U.S. faces regarding doing business across state lines. While U.S. states have great leverage in crafting criminal policy within their own borders, travel and commerce between states falls within the realm of Congress to regulate, as defined by the Interstate Commerce Clause of the *U.S. Constitution*.⁴⁵ This definition means that cannabis retailers seeking to operate across state lines risk violating federal cannabis prohibitions even if they would be operating legally and exclusively in states which have legalized marijuana.

At the same time, it is worth noting that federal legalization of marijuana would not be synonymous with a nationwide legalization in the U.S. Rather, in states which still impose criminal prohibitions on the use or sale of cannabis (such as Idaho, Wyoming, and Texas) they would still criminalize and prosecute said prohibited acts within their jurisdictions. A nationwide legalization effort would require holdout states to lift their criminal prohibition on cannabis individually. There remains precedent for this step to happen. States have slowly but consistently been rolling back state-level prohibitions on cannabis for nearly two decades now and have experienced overwhelming success with the effort to do so, particularly whenever the question has been decided via referendum. Forecasting how long such a process would take, however, remains an opaque process. The variety of political circumstances and procedures between states makes such analysis complicated and the speed with which underlying circumstances can shift and change often leaves such analyses outdated.

⁴³ *Edmondson v. Comm'r of Internal Revenue*, 42 T.C.M. (CCH) 1533 (T.C. 1981).

⁴⁴ 26 U.S.C. § 280E (1982).

⁴⁵ U.S. CONST. art I, § 8, cl 3.

While an act of Congress alone would not constitute nationwide legalization, there is also a theoretical federal route to nationwide legalization either by means of a constitutional amendment protecting cannabis use or a U.S. Supreme Court decision declaring remaining cannabis prohibitions unconstitutional. Both routes have the capacity to supersede state law in a way an act of Congress cannot and have been used to contravene the legal and criminal codes of U.S. states in the past.

In the case of a constitutional amendment, it is worth recalling that the 13th, 14th and 15th Amendments of the *U.S. Constitution* were authorized in the hopes of universally outlawing slavery and granting African Americans full citizenship and voting rights following the U.S Civil War. Similarly, the 18th (and 21st) Amendments outlawing (and later reallowing) the sale and consumption of alcohol are another example.⁴⁶ In the case of a SCOTUS opinion, an apt point of comparison is found in the Court's decision on the topic of abortion which states were prohibited from criminalizing by the case *Roe v. Wade* (1973)⁴⁷ until this decision was recently overturned by the Court's subsequent decision in *Dobbs v. Jackson Women's Health Organization* (2022).⁴⁸

However, such federal paths to nationwide legalization, while more procedurally legible, immediate and direct, are highly unlikely to occur. A constitutional amendment would require a significant consensus on entrenching cannabis use within the *U.S. Constitution*, which does not presently exist. Even the easiest path towards creating a new Amendment would require approval from Congress to be initiated. Considering the current partisan divisions in Congress the odds of an amendment entrenching a right to cannabis use achieving congressional approval – as well as ratification by 38 of 50 states – is practically zero.

A ruling by the U.S. Supreme Court on the constitutionality of cannabis prohibitions is likewise unlikely, at least for the foreseeable future. In the past the Court has typically sided with the constitutionality of existing cannabis prohibitions. The Court's 2005 decision in *Gonzalez v. Raich* is one example.⁴⁹ There, the Court held that individual states' legalization of cannabis products does not immunize citizens living and operating in that state from violations of federal cannabis prohibitions. Considering the politicization and deeply conservative posture the U.S. Supreme Court has adopted since the *Gonzalez* ruling the Court is unlikely to be more sympathetic to the cause of cannabis legalization.

Ultimately, the issue of cannabis legalization serves as an interesting microcosm of the advantages and disadvantages of the U.S. and Canada's respective criminal justice systems. It demonstrates how America's fractious, state-based criminal justice system grants benefits in the form of early adopters paving the way to reform years—sometimes even decades—before federal system like Canada's were able to. In contrast we also see how a highly localized system creates disparities between state codes, and between states and the federal

⁴⁶ U.S. CONST. amend. XVIII; U.S. CONST. amend. XXI.

⁴⁷ 410 U.S. 113 (1973).

⁴⁸ 597 U.S. 215 (2022).

⁴⁹ *Gonzalez*, *supra* note 199.

government that oversees them, which create unique problems that Canada's unitary *Criminal Code* approach overcomes.