

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
REPORT TO THE HOUSE OF DELEGATES
RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress to enact legislation to
2 exempt from the Controlled Substances Act any production, distribution, possession, or
3 use of marijuana carried out in compliance with state laws;
4

5 FURTHER RESOLVED, That the American Bar Association urges Congress to enact
6 legislation to remove marijuana from Schedule I of the Controlled Substances Act, 21
7 U.S.C. §§ 801 et seq.; and
8

9 FURTHER RESOLVED, That the American Bar Association urges Congress to enact
10 legislation to encourage scientific research into the efficacy, dose, routes of
11 administration, or side effects of commonly used and commercially available cannabis
12 products in the United States.

REPORT

Introduction

This resolution resolves the current stalemate between state and federal law over marijuana regulation and to update federal marijuana policy. A majority of states have legalized marijuana in at least some circumstances, while the federal government continues to ban the drug outright. Although the federal government has taken limited steps to accommodate state reforms, the gap between state and federal law has created a regulatory quagmire that is counter-productive for all parties interested in marijuana policy. Taken together, these three Resolutions allow states to develop their own sensible marijuana policies while giving the federal government an important role in establishing minimum regulatory standards. The Resolutions also enable beneficial access to marijuana under federal law and promote research to ensure that both state and federal policy are informed by scientific knowledge.

Background on State Reforms

Over the past two decades, a large majority of states has legalized “marijuana” for at least some purpose. The regulatory approaches pursued by these states vary, as befits our federal system, but each of these states can be divided into one of two basic groups: (1) “Medical Only” states; and (2) “Adult and Medical Use” states.

“Medical Only” states have legalized the use of marijuana—including marijuana that contains tetrahydrocannabinol (THC), the psychoactive cannabinoid produced by the cannabis plant—for the treatment of symptoms associated with certain medical conditions. “Adult and Medical Use” states have adopted broader reforms. Like “Medical Only” states, each of these states has legalized the medical use of marijuana, but they have also legalized adult use of the drug for non-medical purposes as well, in the same way they once legalized consumption of alcohol by adults following the repeal of Prohibition. By the end of 2018, 23 states had adopted “Medical Only” laws, and another 10 states (11, if we include the District of Columbia) had adopted “Adult and Medical Use” laws.¹

Each of these reform states has adopted a comprehensive body of regulations to replace outright prohibition.² The regulations stipulate detailed rules for a litany of marijuana-related activities. For example, Colorado has adopted nearly two-hundred pages of regulations governing the supply of marijuana just for the adult use market.³ Among many other things, this Retail Marijuana Code requires vendors to apply for a special license

¹ Robert A. Mikos, *Only One State Has Not Yet Legalized Marijuana in Some Form . . .*, Marijuana Law, Policy, and Authority Blog, <https://my.vanderbilt.edu/marijuanalaw/2018/07/only-one-state-has-not-yet-legalized-marijuana-in-some-form/> (July 16, 2018). The “Medical Only” category does not include an additional 16 states that have legalized the medical use of marijuana that is low in THC but rich in cannabidiol (CBD), a non-psychoactive produced by the cannabis plant. *Id.*

² For a thorough discussion of how states now regulate marijuana, see Robert A. Mikos, *MARIJUANA LAW, POLICY, AND AUTHORITY* (2017).

³ 1 CCR 212-2.

from the state; maintain detailed records of inventory; limit their advertising; and apply warning labels to all marijuana products. The state has even created a Marijuana Enforcement Division within its Department of Revenue to regulate the state's more than 1,000 licensed marijuana facilities.

Background on Federal Prohibition

Even as these state reforms have proliferated – and public support for them has ballooned,⁴ federal law governing marijuana has remained essentially unchanged since the passage of the Controlled Substances Act (CSA) in 1970.⁵

Under the CSA, all controlled substances (essentially, all substances—with the notable exceptions of alcohol and tobacco—that can cause dependence) are placed onto one of five Schedules (I-V) using criteria that relate to the substance's medical benefits and its harms.⁶ Congress itself placed marijuana on Schedule I when it passed the CSA, reflecting the belief (circa 1970) that marijuana was a dangerous drug without any proven medical benefits that could otherwise redeem it.

This classification means that marijuana – like other Schedule I drugs, such as heroin and LSD – is subjected to the strictest possible regulatory controls. Indeed, the manufacture, distribution, and even possession of Schedule I substances, including marijuana, are criminal offenses outside of very narrowly circumscribed FDA-approved clinical research trials.⁷

The Resulting Regulatory Quagmire

There is an obvious tension between marijuana's Schedule I status – which prohibits marijuana in virtually all circumstances—and state regulatory reforms—which increasingly authorize marijuana for at least some purposes. While state and federal law often diverge—on everything from environmental to workplace laws—marijuana policy is the only area where the states regulate and tax conduct the federal government nearly universally prohibits.

In recent years, the federal government and the states have reached an uneasy truce that has reduced, but not eliminated, this tension. Guidance memos from the Department of Justice (DOJ) to United States Attorneys around the country once generally counseled

⁴ See, e.g., Justin McCarthy, Two in Three Americans Now Support Legalizing Marijuana, Gallup, Oct. 22, 2018 (reporting that 66% of Americans support legalizing marijuana, up from only 12% in 1970).

⁵ The CSA is codified at 21 U.S.C. §§ 801 et seq. Congress has recently enacted one notable reform: it narrowed the definition of “marijuana” for purposes of the CSA, and thus the scope of the statute’s ban on the drug, when it passed the 2018 Farm Bill. See Robert A. Mikos, *See New Congressional Farm Bill Legalizes Some Marijuana*, Marijuana Law, Policy, and Authority Blog, <https://my.vanderbilt.edu/marijuanalaw/2018/12/new-congressional-farm-bill-legalizes-some-marijuana/> (Dec. 13, 2018) (noting that 2018 Farm Bill excludes from the definition of marijuana cannabis that contains less than .3% THC by dry weight).

⁶ 21 U.S.C. § 812(b). These criteria include the substances’ accepted medical use (if any), its potential for abuse, and its physical and psychological effects on the body. *Id.*

⁷ See *id.* at §841 (criminalizing marijuana trafficking); *id.* at § 844 (criminalizing marijuana possession).

deference to state policy.⁸ While those memos have been rescinded,⁹ the federal government continues to acquiesce to state legalization and regulation of marijuana. Within the last few years, Congress has written some temporary protections against federal criminal enforcement into budget legislation. In particular, beginning in 2014, Congress has attached riders prohibiting the DOJ from using any of its budgeted funds to “prevent . . . States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”¹⁰ The federal courts have interpreted these riders to bar federal prosecution of persons acting in conformity with state medical marijuana laws.¹¹

Notwithstanding these steps, however, the tension between state and federal laws governing marijuana persists. For one thing, spending riders do not shield anyone acting in compliance with any state’s *Adult Use* marijuana laws. Moreover, the protection afforded by such riders is only temporary. If a rider lapses, both medical and non-medical marijuana users and suppliers would be subject to arrest and prosecution by the DOJ, and not just for their conduct going forward. Those using and producing marijuana could also be prosecuted for violations of the Controlled Substances Act they committed while the riders were in effect (so long as the statute of limitations has not expired).¹² Moreover, anyone out of compliance with state regulations would also be subjected to criminal sanction, even if their violations of state regulations were *de minimis*.

More fundamentally, however, because the spending riders operate only as a restraint on DOJ action, they have not prevented other parties from using federal law against state-compliant marijuana businesses and users. For example, state-licensed and state law-abiding marijuana businesses continue to have difficulty obtaining banking services, due to financial regulations that limit transactions in the proceeds of “unlawful” activities; they pay unusually high federal taxes, due to federal tax code rules that deny them deductions other (federally legal) businesses are allowed to take; they cannot secure federal protection for their trademarks, due to administrative rules that limit such protection to marks used in “lawful” commerce; and they have faced a growing number of private

⁸ See Memorandum from David W. Ogden, Deputy Attorney Gen., to Selected U.S. Attorneys (Oct 19, 2009); Memorandum from James M. Cole, Deputy Attorney Gen., to All U.S. Attorneys (Aug. 29, 2013).

⁹ See Memorandum from Jefferson B. Sessions, III, Attorney General, to All United States Attorneys (Jan. 4, 2018).

¹⁰ The latest of these riders can be found in Section 538 of the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, March 23, 2018, 132 Stat. 348.

¹¹ E.g., *United States v. McIntosh*, 833 F.3d 1163, 1177 (9th Cir. 2016) (“We therefore conclude that, at a minimum, [that the spending rider] prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws.”).

¹² *McIntosh*, 833 F.3d at 1179 n.5 (“Congress currently restricts the government from spending certain funds to prosecute certain individuals. But Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding.”).

lawsuits under federal law, because the federal RICO statute considers growing and selling marijuana to be actionable racketeering activities.¹³

What is more, the ongoing tension has generated considerable confusion over the enforceability of some state regulations. Although Congress may not force the states to ban marijuana (e.g., to enact or retain their own state law prohibitions on marijuana activities), just how far the states may depart from the federal government's approach to regulating marijuana remains unclear.¹⁴ State laws regulating a variety of activities – from employment discrimination against marijuana users to taxation of marijuana sales – have been subject to preemption challenges brought by private parties and even state officials.¹⁵

No one should be satisfied with the regulatory quagmire that has resulted from the unresolved tension between state reforms and federal law. Although many of the burdens described above fall upon marijuana users and suppliers, not all of these costs are internalized to those violating federal law. For example, the unavailability of even the most basic banking services means that marijuana is a multi-billion dollar cash business. This makes marijuana businesses and their clients targets of crime and significantly hampers the work of the state regulators and tax collectors who govern them.

To Resolve the Tension Congress Should Allow States to Opt out of the CSA

Congress could solve this regulatory quagmire by passing federal legislation that empowers states to opt out of the CSA. Such legislation would make the CSA's strict prohibitions inapplicable to any conduct that complies with state marijuana law. Because compliance with state law would also make their conduct legal under federal law, individuals and businesses would no longer encounter the obstacles described above: marijuana businesses could obtain banking and legal services, deduct their reasonable business expenses when computing their federal tax liability, obtain federal protection for their trademarks, avoid civil RICO liability, and so on. Within those states still wishing to prohibit marijuana (in some or all circumstances), the existing federal prohibitions would remain in place, and federal resources would be available to bolster state efforts to eradicate the drug within the state's borders.

Congress could also use this legislation to shape state marijuana regulations in a way it cannot under federal prohibition; it could impose conditions on opting out of the CSA that

¹³ See Erwin Chemerinsky, et al., Cooperative Federalism and Marijuana Regulation, 62 UCLA L. Rev. 74, 90-100 (2015); Mikos, Marijuana Law, Policy, and Authority, *supra* note 2, at 396-412 (detailing these and other obstacles faced by state-licensed marijuana businesses).

¹⁴ See Robert A. Mikos, On the Limits of Supremacy: Medical Marijuana and the States' Overlooked Power to Legalize Federal Crime, 62 Vand. L. Rev. 1461, 1445-1459 (2009) (explaining the limits on Congress's preemptive power).

¹⁵ E.g., *Bourgoin v. Twin Rivers Paper Co., LLC*, 187 A.3d 10 (Maine 2018) (holding state workers compensation law preempted to the extent it required employer to compensate injured employee for purchase of medical marijuana); *Nebraska v. Colorado*, 136 S. Ct. 1034 (2016) (denying states' request for leave to file complaint in Supreme Court's original jurisdiction; complaint had sought declaration that regulatory structure created by Colorado's Amendment 64 conflicts with and is thus preempted by the federal CSA).

would incentivize states to adopt and maintain careful controls on marijuana activities. For example, legislation could specify that compliance with state law would exempt individuals from the CSA only if a state's reforms met certain minimum criteria, like banning possession by minors (other than for medical use) or limiting the volume of individual retail transactions.¹⁶

The Strengthening the Tenth Amendment Through Entrusting States Act (STATES Act)¹⁷, a bipartisan bill introduced in Congress last term, provides a concrete example of how this could be done. The STATES Act provides in relevant part that the marijuana prohibitions set forth in the CSA “shall not apply to any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana.”¹⁸ The intent of the STATES Act is clearly to do away with the collateral consequences of marijuana's federal illegality discussed above (e.g., the inability to access banking services).¹⁹ The STATES Act also imposes some minimal conditions on a state's ability to opt-out of the federal ban, e.g., by continuing to ban the sale of non-medical marijuana to anyone under 21 years of age, regardless of how state law might treat such sales.²⁰

To Remove Unnecessary Federal Restrictions, Congress Should Also Remove Marijuana from Schedule I of the CSA

In addition to passing legislation that would allow states to opt out of the CSA's strict prohibitions, the ABA also urges Congress to move marijuana off of Schedule I. By itself, the opt-out legislation described above would not change marijuana's status as a Schedule I controlled substance under the CSA. As a result, federal law would continue to criminalize virtually all activities involving marijuana in states that continued to ban the drug. Congress, however, may wish to roll back some federal restrictions on marijuana, regardless of how states choose to regulate the drug for purposes of their own laws.

When Congress placed marijuana on Schedule I nearly half a century ago, it never intended for its decision to be etched in stone. Congress authorized the Drug Enforcement Administration (DEA), in consultation with the Food and Drug Administration (FDA), to reschedule substances,²¹ including marijuana, according to the criteria discussed above. Indeed, Congress arguably expected the agencies to revisit its original marijuana scheduling decision as regulators learned more about the drug.²²

¹⁶ This use of the conditional preemption power would not run afoul of the anti-commandeering principle, so long as the pressure exerted by Congress is not coercive. See Mikos, *On the Limits*, supra note 14, at 1460-1462 (discussing conditional preemption power).

¹⁷ STATES Act, S.3032 — 115th Congress (2017-2018).

¹⁸ Id. at §2.

¹⁹ See Robert A. Mikos, *Analysis of the Warren-Gardner STATES Act*, Marijuana Law, Policy, and Authority Blog, <https://my.vanderbilt.edu/marijuanalaw/2018/06/analysis-of-the-warren-gardner-states-act/> (June 7, 2018) (explaining the legal ramifications of the STATES Act for state-licensed marijuana businesses).

²⁰ Id. (discussing continuing limits imposed by STATES Act).

²¹ The rescheduling authority is found in 21 U.S.C. § 811.

²² See *Gonzales v. Raich*, 545 U.S. 1, 14 (2005) (discussing history behind Congress's original scheduling decision).

In the decades since the CSA was passed, views of marijuana's harms and benefits have evolved. For example, whereas research once suggested that marijuana was a gateway to more serious drugs, even the DEA has recently downplayed the causal relationship between use of marijuana and use of more dangerous drugs.²³ Put simply, while no one seriously claims that marijuana is a harmless drug, few believe today it is as harmful as once believed (or as harmful as other drugs on Schedule I). Likewise, although federal agencies continue to question marijuana's medical utility, they are now more open to the idea that marijuana shows promise as a medical treatment for various illnesses. In its last response to a rescheduling petition (in 2016), for example, the DEA recognized that there were at least 11 "proof of concept" studies that "provide preliminary evidence" of marijuana's therapeutic potential.²⁴ Indeed, following the DEA's response, the National Academies of Sciences, Engineering, and Medicine conducted its own thorough review of the scientific literature regarding marijuana's therapeutic benefits. It concluded that while the jury is still out regarding some of marijuana's health effects, "[t]here is conclusive or substantial evidence that cannabis or cannabinoids are effective: For the treatment of chronic pain in adults (cannabis); As antiemetics in the treatment of chemotherapy-induced nausea and vomiting (oral cannabinoids); [and] For improving patient-reported multiple sclerosis spasticity symptoms (oral cannabinoids)."²⁵ What is more, irrespective of its medical utility, the general population has also become increasingly comfortable with non-medical use of marijuana.²⁶

However, marijuana's placement on Schedule I has proven more resistant to change than the 91st Congress might have anticipated. This is due in part to the very high bar federal agencies have set for moving a drug off of Schedule I. According to the DEA, doing so requires demonstrating, with a high degree of certainty, that a drug has an accepted medical use. To demonstrate accepted medical use, the DEA and FDA have interpreted the CSA to require large scale, double-blind, and well-controlled clinical research trials.²⁷ But Congress's decision to place marijuana on Schedule I has complicated the task of conducting such research. Because of its status as a Schedule I drug, marijuana is subject to a number of special controls that increase the cost and difficulty of conducting

²³ See Drug Enforcement Administration, *Maintaining Marijuana in Schedule I of the Controlled Substances Act*, 81 Fed. Reg. 53838 (July 2016) (acknowledging that "although many individuals with a drug abuse disorder may have used marijuana as one of their first illicit drugs, this does not mean that individuals initiated with marijuana inherently will go on to become regular users of other illicit drugs").

²⁴ *Id.* at 53836. And since Congress first put marijuana on Schedule I, the FDA has approved three marijuana-related products for medical use. These include two drugs containing synthetic THC: Nabilone (Schedule II) and Dronabinol (Schedule III), as well as one drug made from natural CBD, Epidiolex (Schedule V).

²⁵ National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* 12 (2017).

²⁶ See McCarthy, *supra* note 4 (discussing polling data).

²⁷ E.g., Drug Enforcement Administration, *Denial of Petition to Initiate Proceedings to Reschedule Marijuana*, 81 Fed. Reg. at 53779 (Aug. 12, 2016) (demanding "adequate, well-controlled, well-designed, well-conducted, and well-documented studies" to establish drug's accepted medical use). By contrast, the agencies discount or ignore altogether other probative evidence of a drug's medical utility, such as the judgments of medical practitioners, small scale trials, or the views of the 33 states (and counting) that have sanctioned the medical use of marijuana. See, e.g., *id.* at 53780 (stating that "medical practitioners are not qualified by scientific training and experience to evaluate the safety and effectiveness of drugs").

large-scale studies to test its efficacy.²⁸ In other words, Congress’s decision to place marijuana on Schedule I in 1970 has proven to be one of the principal reasons that marijuana *remains* on Schedule I today.

To lessen existing federal restrictions on beneficial access to marijuana throughout the nation, Congress should move marijuana off of Schedule I. Congress could then place marijuana on a lower Schedule (II-V) under the CSA. To be sure, moving marijuana to Schedule II would have a very limited effect on the problems discussed earlier, because Schedule II drugs are subject to tight regulatory controls, similar to those applicable to Schedule I drugs. But moving marijuana to a lower Schedule (III-V) would allow for easier access to the drug for research and therapeutic purposes. Congress could even choose to remove marijuana from the CSA altogether, in the same way it exempted alcoholic beverages and tobacco from the statute’s coverage in the first instance. Namely, when it passed the CSA, Congress expressly declared that the CSA would not apply to “distilled spirits, wine, malt beverages, or tobacco”²⁹ notwithstanding the manifest health risks posed by them. Instead, Congress choose to subject those two substances to a different body of regulations. In similar fashion, Congress could de-schedule marijuana and then adopt federal regulations to help states control the production, packaging, marketing, and interstate sale of marijuana (much as it has done for alcohol and tobacco).

In sum, simply enabling the states to opt-out of the CSA’s marijuana ban may not be enough to fix federal marijuana policy. Without further change, the CSA would continue to limit beneficial access to the drug, especially in those states that continue to ban the drug outright.

To Ensure that State and Federal Marijuana Laws Are Well-Informed by Science, Congress Should Also Encourage Further Research into the Health Effects of Marijuana

As noted above, marijuana’s status as a Schedule I drug has made scientific research into marijuana and marijuana products extremely difficult to conduct.

The third Resolution goes beyond removing those barriers to research. It urges Congress to actively facilitate research into marijuana, a recommendation that should be uncontroversial. In 2016, the DEA announced that the agency “—along with the Food and Drug Administration (FDA) and the National Institutes of Health (NIH)—fully supports expanding research into the potential medical utility of marijuana and its chemical constituents.”³⁰ The National Academies of Sciences, Engineering, and Medicine has also called upon “public agencies, philanthropic and professional organizations, private companies, and clinical and public health research groups . . . [to] provide funding and

²⁸ See, e.g., John Hudak & Grace Wallack, Ending the U.S. Government’s War on Medical Marijuana Research (Brookings Oct. 2015); Alex Kreit, Controlled Substances, Uncontrolled Law, 6 Alb. Gov’t L. Rev. 332, 356 (2013) (“By design, the CSA makes it incredibly difficult to research [Schedule I] substances [like marijuana].”); National Academies, *supra* note 25, at 378-79.

²⁹ 21 U.S.C. § 802(6).

³⁰ Drug Enforcement Administration, Applications To Become Registered Under the Controlled Substances Act To Manufacture Marijuana To Supply Researchers in the United States, 81 Fed. Reg. 53846 (Aug. 12, 2016).

support for a national cannabis research agenda that addresses key gaps in the evidence base.”³¹

The third Resolution would answer that call. It urges Congress to actively support scientific research on marijuana. As greater scientific knowledge of the benefits and harms of marijuana develops, Congress and the states can work together to ensure that the benefits of marijuana can be realized while the harms of the drug are properly addressed. Encouraging careful scientific study of marijuana will be beneficial regardless of the direction of marijuana law reform in the future.

Respectfully submitted,

Lucian Dervan
Chair, Criminal Justice Chair
August 2019

³¹ National Academies, *supra* note 25, at 9.

GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Lucian Dervan, Chair

1. Summary of Resolution(s).

This resolution is to help resolve the current stalemate between state and federal law over marijuana regulation and to update federal marijuana policy. A majority of states have legalized marijuana in at least some circumstances, while the federal government continues to ban the drug outright. Although the federal government has taken limited steps to accommodate state reforms, the gap between state and federal law has created a regulatory quagmire that is counter-productive for all parties interested in marijuana policy. The resolution allows states to develop their own sensible marijuana policies while giving the federal government an important role in establishing minimum regulatory standards. Finally, the resolution enables beneficial access to marijuana under federal law and promotes research to ensure that both state and federal policy are informed by scientific knowledge.

2. Approval by Submitting Entity.

This resolution was approved by the Criminal Justice Council at its Spring Meeting on April 7, 2019, in Nashville, TN.

3. Has this or a similar resolution been submitted to the House or Board previously?

Not to our knowledge.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In 1984, the ABA approved two recommendations from the Section of Individual Rights & Responsibilities, now the Section of Civil Rights and Social Justice; first, to support the right of individuals to treat serious illnesses with marijuana under the supervision of a physician, and, second, to enact federal legislation that would allow physicians to use marijuana to treat patients with serious illnesses. Nothing in the present resolution would impact the 1984 resolution.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable)

Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

This resolution allows the Governmental Affairs Office to actively support the drafting and enactment of federal legislation consistent with them.

8. Cost to the Association. (Both direct and indirect costs)

We don't believe there are additional costs to the ABA.

9. Disclosure of Interest. (If applicable)

Not applicable

10. Referrals. Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and interested groups:

Business Law
Civil Rights & Social Justice
Government & Public Sector Lawyers
Health Law
Infrastructure & Regulated Industries
Judicial Division
Labor & Employment Law
Litigation
Science & Technology
State & Local Government Law
Taxation
Tort Trial & Insurance Practice
Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution resolves the current stalemate between state and federal law over marijuana regulation and to update federal marijuana policy. A majority of states have legalized marijuana in at least some circumstances, while the federal government continues to ban the drug outright. Although the federal government has taken limited steps to accommodate state reforms, the gap between state and federal law has created a regulatory quagmire that is counter-productive for all parties interested in marijuana policy. The resolution allows states to develop their own sensible marijuana policies while giving the federal government an important role in establishing minimum regulatory standards. The resolution enables beneficial access to marijuana under federal law and promotes research to ensure that both state and federal policy are informed by scientific knowledge.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the outdated placement of marijuana as a Schedule 1 controlled substance in federal Controlled Substances Act and the continuing conflict with newly-enacted state statutes that either allow marijuana use by adults and/or for medical purposes. Businesses that produce marijuana lawfully within state borders are not able to utilize banking services and other federal statutes regulating commerce. Placement of marijuana as a Schedule 1 controlled substance is a barrier to research, and without research, the DEA cannot recommend that marijuana be moved to another schedule or be eliminated from the CSA altogether.

3. Please Explain How the Proposed Policy Position Will Address the Issue

These resolutions will allow the ABA to advocate for federal statutes that remove marijuana from Schedule 1 of the CSA, that enable marijuana businesses to utilize banking and other services run by the federal government, and encourages research into marijuana.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

These resolutions do not address and do not promote international trafficking of marijuana, which many believe should still be illegal at both the state and federal level. In addition, there are concerns about the overuse of marijuana by young people and adults, or the public threat by those who operate a motor vehicle while under the influence of marijuana; many of these views would be addressed if there was greater factual evidence of the benefits and harm of marijuana.