

Interaction Between State and Federal Law Enforcement

AB 1578: The End of Marijuana Prohibition as We Know It?

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Code Section Affected

Health and Safety Code §§ 11362.6 (new);
AB 1578 (Jones-Sawyer).

TABLE OF CONTENTS

I. INTRODUCTION 450

II. LEGAL BACKGROUND 452

 A. *California’s Law Prior to AB 1578* 453

 B. *Federal Guidelines for Handling Marijuana Law* 456

 C. *Economic Context* 459

 D. *Constitutionality* 461

 E. *Impetus for AB 1578* 462

III. AB 1578 463

IV. ANALYSIS 464

 A. *Positive Effects of AB 1578* 464

 1. *How Will AB 1578 Affect California’s Economy?* 465

 a. *AB 1578 Might Have Increased Marijuana-Related Investment in California* 466

 b. *AB 1578 Might Have Encouraged Job Creation* 467

 c. *AB 1578 Might Have Increased Tax Revenue* 468

 2. *How Would AB 1578 Have Affected Public Health?* 469

 3. *What Effect Will AB 1578 have on Voter Efficacy?* 470

 B. *Argument by Opponents of AB 1578* 471

 1. *How Would AB 1578 Have Affected Public Safety?* 472

 2. *How Would AB 1578 Have Affected Cooperation with State and Local Authorities?* 473

 3. *Would AB 1578 Have Presented Preemption Issues?* 475

 4. *Would AB 1578 Have Resulted in Federal Intervention for Violating the Cole Memo?* 478

V. CONCLUSION 479

I. INTRODUCTION

In 2012, Gavin was born prematurely.¹ As a result, he experienced low muscle tone and didn't reach his early standard benchmarks typical of a child his age.² Gavin's health and development only seemed to worsen by the time he turned two.³ It took almost two years before Gavin could walk, and almost three before he could talk.⁴ Ultimately, Gavin was diagnosed "with complex partial seizures, cerebral palsy and an unknown genetic anomaly, as well as cyclical vomiting and autism."⁵

Gavin's doctors prescribed him "the anticonvulsant Keppra for his seizures."⁶ The three-year-old experienced immediate relief from the seizures, but his autistic behavior worsened, leading to uncontrollable meltdowns.⁷ While Gavin's parents read about this so-called "Keppra rage," they "were hesitant to take him off of the drug or add another one" because it was successfully reducing his seizures.⁸ During this time, Gavin's mother saw a documentary on CNN about the potential health benefits some experienced using marijuana.⁹

By 2014, "his behavior [was] out of control, [and] life with Gavin had become a daily struggle."¹⁰ That was when Gavin's mother brought him to see Dr. Bonni Goldstein, "a physician who specializes in cannabis medicine in Los Angeles, California."¹¹ Within ten days of starting a new treatment involving marijuana, Gavin, "[who was] previously non-verbal, began speaking."¹² He was weaned off of Keppra over the next five months, and after [his] dosage was adjusted, "Gavin hasn't needed any further antiepileptic medications."¹³ Although not everyone will experience such drastic levels of improvement,

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1. Bonni Goldstein, *Five-Year-Old Gavin's Cannabis Success Story Will Move You to Tears*, MARIJUANA (Apr. 20, 2017, 8:20 AM), <https://www.marijuana.com/news/2017/04/five-year-old-gavins-cannabis-success-story-will-move-you-to-tears/> (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

“Gavin’s story is an example of why cannabis treatment must be an available option for all . . . with severe medical conditions.”¹⁴

Californians voted to allow the medical and recreational use of marijuana in 1996 and 2016, respectively.¹⁵ Under the Obama administration, Californians in compliance with the law were given assurances that they “would not be subject to harassment, arrest, or incarceration by the federal government” so long as their state developed “a robust regulatory and enforcement system.”¹⁶ With the election of Donald Trump as President, it is unclear how his administration will handle federal enforcement of marijuana laws.¹⁷ While President Trump voiced support for states’ rights on the issue of legal marijuana, his nomination of Jeff Sessions, a staunch anti-drug crusader,¹⁸ indicated a potential shift towards a federal crackdown.¹⁹

Since Californians have voted to approve the medical and recreational use of marijuana, the use of state and local authorities for a federal crackdown would be contrary to majoritarian sentiment.²⁰ To prevent this from occurring, Assembly Member Jones-Sawyer introduced AB 1578.²¹ AB 1578 would have prohibited state or local agencies from using resources to assist federal authorities in enforcement of marijuana laws, unless directed by court order.²²

Part II provides an overview of the historical context and background issues preceding AB 1578.²³ Part III lays out AB 1578’s essential provisions.²⁴ Finally, Part IV discusses some of the legal issues relevant to AB 1578.²⁵

14. *Id.*

15. Michael Boldin, *California Assembly Passes Bill to Ban Resources for Federal Marijuana Enforcement*, TENTH AMENDMENT CTR. (June 1, 2017), <http://blog.tenthamendmentcenter.com/2017/06/california-assembly-passes-bill-to-ban-resources-for-federal-marijuana-enforcement/> (on file with *The University of the Pacific Law Review*).

16. Ryan Morimune, *AB 1578: Protecting Californians Against Federal Attacks on Lawful Marijuana Activity*, LARRP, available at <http://www.lareentry.org/wp-content/uploads/2017/05/AB-1578-Fact-Sheet.pdf> (on file with *The University of the Pacific Law Review*).

17. Keegan Hamilton, *A Trump Crackdown on Legal Weed Could Cost the U.S. a Quarter Million Jobs*, VICE NEWS (Feb. 27, 2017), <https://news.vice.com/story/a-trump-crackdown-on-legal-weed-could-cost-the-u-s-a-quarter-million-jobs> (last visited Oct. 4, 2017) (on file with *The University of the Pacific Law Review*).

18. Christopher Teague, *Jeff Sessions: Anti-Weed Crusader Received Big Money From Big Tobacco*, HERB (July 3, 2017), <http://herb.co/2017/07/03/jeff-sessions-big-tobacco/> (on file with *The University of the Pacific Law Review*).

19. Carrie Johnson, *Legal Marijuana Advocates Are Uneasy With Sessions’ Stance*, NPR (Apr 6, 2017, 5:08 AM), <http://www.npr.org/2017/04/06/522821701/legal-marijuana-advocates-are-uneasy-with-sessions-stance> (on file with *The University of the Pacific Law Review*) (noting how Sessions’ nomination raised fears of a federal crackdown on marijuana).

20. See Morimune, *supra* note 16 (noting that California’s voters and legislature approved of marijuana).

21. *Id.*

22. *Id.*

23. *Infra* Part II.

24. *Infra* Part III.

25. *Infra* Part IV.

II. LEGAL BACKGROUND

Although marijuana is classified as a Schedule I substance under the Controlled Substances Act²⁶ and remains illegal under federal law, Californians legalized the medical use of marijuana by passing the Compassionate Use Act of 1996.²⁷ Following California's lead, 12 states approved measures permitting the medical use of marijuana.²⁸ Under President Clinton and President Bush, the United States Department of Justice (DOJ) largely gave "a free pass" to medical marijuana users who complied with state law.²⁹

President Obama's administration continued this laissez-faire policy by promulgating the Rohrabacher-Farr Amendment,³⁰ which prevents the DOJ from aggressively targeting states that allow for the use of medical marijuana.³¹ While President Trump has yet to alter federal marijuana policies, his nomination of Jeff Sessions for Attorney General signals a potential change in policy and concerns persons operating in compliance with California law.³²

The Obama-era policies created a platform that allowed voters to decide the fate of marijuana laws in their states.³³ This potential shift in federal policy—away from the voters' preference—provides context for and insight into what prompted AB 1578.³⁴ Part A explains how California enforced marijuana laws prior to AB 1578.³⁵ Part B analyzes the federal guidelines for enforcing

26. Controlled Substances Act, 21 U.S.C. § 812, Schedule I(c)(10) (2017).

27. CAL. HEALTH & SAFETY CODE § 11362.5 (1996) (Cal. Proposition 215).

28. David G. Savage, *Supreme Court Action Upholds California's Medical Pot Law*, L.A. TIMES (May 19, 2009, 11:03 AM), <http://articles.latimes.com/2009/may/19/nation/na-court-marijuana19> (on file with *The University of the Pacific Law Review*).

29. STUART TAYLOR, JR., GOVERNANCE STUDIES AT BROOKINGS, MARIJUANA POLICY AND PRESIDENTIAL LEADERSHIP: HOW TO AVOID A FEDERAL-STATE TRAIN WRECK 1, 20 (Apr. 2013), available at https://www.brookings.edu/wp-content/uploads/2016/06/Marijuana-Policy-and-Presidential-Leadership_v27.pdf (on file with *The University of the Pacific Law Review*).

30. Sara Brittany Somerset, *Federal Medical Marijuana Protections Extended Through September 2017*, HIGH TIMES (May 1, 2017), <http://hightimes.com/news/federal-medical-marijuana-protections-extended-through-september-2017/> (on file with *The University of the Pacific Law Review*).

31. Christopher Ingraham, *It Took Jeff Sessions Just One Month to Turn Obama-Era Drug Policy on Its Head*, WASH. POST (June 2, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/06/02/it-took-jeff-sessions-just-one-month-to-turn-obama-era-drug-policy-on-its-head/> (on file with *The University of the Pacific Law Review*).

32. Patrick McGreevy, *Weed's Legal in California, But Activists Fear a Battle Ahead with Jeff Sessions - Trump's Pick for Attorney General*, L.A. TIMES (Dec 1, 2016, 12:05 AM), <http://www.latimes.com/politics/la-pol-ca-marijuana-legalization-jeff-sessions-snap-20161201-story.html> (on file with *The University of the Pacific Law Review*).

33. See Morimune, *supra* note 16 (explaining how the Obama administration left states that had developed "robust regulatory and enforcement systems" for marijuana alone).

34. See *id.* (explaining how AB 1578 is intended to prevent the will of California's voter from being undermined).

35. *Infra* Part II.A.

marijuana laws.³⁶ Part C explains the economic context of AB 1578.³⁷ Part D discusses the constitutionality of anti-cooperation policies that function similar to AB 1578.³⁸ Section E explains the impetus for AB 1578.³⁹

A. *California's Law Prior to AB 1578*

Existing law allows for the medical use of marijuana in California.⁴⁰ In 1991, the Federal government closed the Compassionate Use Investigational New Drug program for marijuana, which provided medical marijuana to patients suffering from AIDS.⁴¹ Californians responded by approving Proposition 215,⁴² which allows a patient, or their primary caregiver, to possess or cultivate marijuana for medical purposes as long as they have a physician's approval or recommendation.⁴³ Proposition 215 also protects physicians from punishment for recommending marijuana to a patient for medical purposes, and defines "primary caregiver" as "the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person."⁴⁴

Similarly, existing law permits recreational use of marijuana in California.⁴⁵ In 2016, Californians voted for, and overwhelmingly approved Proposition 64⁴⁶—also known as the Adult Use of Marijuana Act (AUMA).⁴⁷ AUMA expands California's marijuana law and allows adults over the age of 21 to use marijuana recreationally.⁴⁸ AUMA allows adults over the age of 21 to "possess, process, transport, purchase, obtain," and give away twenty-eight and one-half grams of marijuana "not in the form of concentrated cannabis."⁴⁹ On the other hand, AUMA limits the above-enumerated interactions with concentrated

36. *Infra* Part II.B.

37. *Infra* Part II.C.

38. *Infra* Part II.D.

39. *Infra* Part II.E.

40. CAL. HEALTH & SAFETY CODE § 11362.5 (1996) (Cal. Proposition 215).

41. CLINTON A. WERNER, MEDICAL MARIJUANA AND THE AIDS CRISIS 17 (2001).

42. *Id.*

43. CAL. HEALTH & SAFETY CODE § 11362.5 (1996) (Cal. Proposition 215).

44. *Id.*

45. CAL. HEALTH & SAFETY CODE §11362.1(a)(1) (enacted by Cal. Proposition 64, approved Nov. 8, 2016, eff. Nov. 9, 2016).

46. *California Voters Overwhelmingly Approve Marijuana Legalization*, DRUG POL'Y ALLIANCE (Nov. 8, 2016), <http://www.drugpolicy.org/news/2016/11/california-voters-overwhelmingly-approve-marijuana-legalization> (on file with *The University of the Pacific Law Review*); Veronica Rocha, *Pot smokers celebrate 4/20 across California*, L.A. TIMES (April 20, 2017 11:30 AM), <http://www.latimes.com/local/lanow/la-me-ln-marijuana-420-day-california-20170420-story.html> (on file with *The University of the Pacific Law Review*).

47. CAL. HEALTH & SAFETY CODE §11362.1(a)(1) (2016).

48. *Id.*

49. *Id.*

cannabis to only eight grams.⁵⁰ Additionally, adults over the age of 21 are allowed “to possess, plant, cultivate, harvest, dry, or process [up to] six living marijuana plants,” and may possess the dried marijuana produced by the plants.⁵¹

Even though statistics about the effects of marijuana have not been recorded in California since it approved Proposition 215,⁵² one statistic that can be deduced is the decrease in death by opioids year to year.⁵³ Even without state records, researchers can infer the decrease in deaths by conducting a time-series analysis of medical cannabis laws and state-level death certificate data in all 50 states from 1999 to 2010.⁵⁴ According to a 2014 Journal of the American Medical Association study, “states with medical marijuana laws between 1999 and 2010 saw, on average, about 25% fewer opiate overdose deaths than states without such laws.”⁵⁵ Further, “the effect of a medical marijuana law appeared to grow over time — more lives were saved each additional year after the laws’ implementation, suggesting an effect from more people taking advantage of the programs.”⁵⁶

Numerous studies analyzing the connection between legalizing marijuana and the rate of death from driving under the influence (DUI) have been performed over the past decade; however, the findings are not all in agreement.⁵⁷ First, a 2014 American Automobile Association (AAA) Foundation for Traffic

50. *Id.*

51. *Id.*

52. See Brooke Edwards Staggs, *Considering a Career Path in the Pot Industry? Here’s What You Should Know*, ORANGE COUNTY REG. (June 14, 2016, 6:19 AM PST), <http://www.ocregister.com/2016/06/14/considering-a-career-path-in-the-pot-industry-heres-what-you-should-know/> (on file with *The University of the Pacific Law Review*) (explaining that there are no reliable records related to marijuana in California because California has not kept records since passing Prop. 215).

53. Christopher Ingraham, *Attorney General Sessions Wants to Know the Science on Marijuana and Opioids. Here It Is*, WASH. POST (Feb. 28, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/02/28/attorney-general-sessions-wants-to-know-the-science-on-marijuana-and-opioids-here-it-is/> (on file with *The University of the Pacific Law Review*).

54. Marcus A. Bachhuber et al., *Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010*, 174 JAMA INTERNAL MED. 1668 (2014).

55. Ingraham, *supra* note 53.

56. *Id.*

57. *Compare After States Legalized Medical Marijuana, Traffic Deaths Fell*, REUTERS (Dec. 29, 2016), <http://www.foxnews.com/health/2016/12/29/after-states-legalized-medical-marijuana-traffic-deaths-fell.html> [hereinafter *Columbia Study*] (on file with *The University of the Pacific Law Review*) (explaining that deaths fall after states legalize marijuana), with Patrick McGreevy, *A Proposition to Legalize Pot Raises DUI Concerns: ‘We Are Going to Start Losing Folks in Astronomical Numbers’*, L.A. TIMES (Oct. 18, 2016, 12:05 AM), <http://www.latimes.com/politics/la-pol-ca-pot-proposition-64-law-enforcement-20161018-snap-story.html> (on file with *The University of the Pacific Law Review*) (explaining that states that legalized marijuana saw increased “marijuana-related” deaths), and Tamara Johnson, *Fatal Road Crashes Involving Marijuana Double After State Legalizes Drug*, AAA NEWS ROOM, <http://newsroom.aaa.com/2016/05/fatal-road-crashes-involving-marijuana-double-state-legalizes-drug/> (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*) (explaining that since Washington legalized marijuana, there was a significant increase in “fatal crashes involving marijuana”).

Safety study found, “[t]he percentage . . . of drivers involved in fatal crashes who recently used marijuana more than doubled from 8–17% between 2013 and 2014.”⁵⁸ Second, a 2016 Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) study found, “marijuana related traffic deaths in Colorado increased 48% since 2013, when that state legalized recreational use of marijuana.”⁵⁹ Third, a 2016 Columbia University Mailman School of Public Health study analyzed 1.2 million traffic fatalities nationwide from 1985 through 2014 and found “deaths dropped 11 percent on average in states that legalized medical marijuana.”⁶⁰

Studies performed on the connection between legalizing marijuana and violent crime rates generally come to the same conclusion—legalizing marijuana does not lead to an increase in violent crime.⁶¹ First, “a 2016 CATO Institute study determined crime rates are unaffected by marijuana legalization.”⁶² Second, a 2015 study performed by the Drug Policy Alliance found that since Washington legalized marijuana, “violent crime rates dropped by 10 percent.”⁶³ Third, a 2014 study performed by the University of Texas at Dallas found that “legalization of medical cannabis is not an indicator of increased crime.”⁶⁴ Rather, “[i]t actually may be related to reductions in certain types of crime.”⁶⁵

The California legislature added California Government Code section 7282.5 in 2014.⁶⁶ It allows a law enforcement official to detain an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release, if one of the specified conditions apply.⁶⁷ The specified conditions include situations where an “individual has been convicted . . . at any time of . . . [a]n offense involving the felony possession,

58. Johnson, *supra* note 57.

59. McGreevy, *supra* note 57.

60. Columbia Study, *supra* note 57.

61. See Alan Pyke, *Sessions: Legal Pot Drives Violent Crime, Statistics be Damned*, THINK PROGRESS (Feb. 28, 2017), <https://thinkprogress.org/sessions-legal-pot-violent-crime-8640413ca090> (on file with *The University of the Pacific Law Review*) (explaining that violent crime rates tend to decrease where marijuana is legalized); see also *No Correlation Between Medical Marijuana Legalization, Crime Increase: Legalization May Reduce Homicide, Assault Rates*, SCIENCEDAILY (Mar. 26, 2014), www.sciencedaily.com/releases/2014/03/140326182049.htm (on file with *The University of the Pacific Law Review*) (explaining that legalizing marijuana leads to a reduction in violent crime rates).

62. See Angela Dills et al., *Dose of Reality: The Effect of State Marijuana Legalizations*, CATO INST. (Sept. 16, 2016), <https://www.cato.org/publications/policy-analysis/dose-reality-effect-state-marijuana-legalizations#full> (on file with *The University of the Pacific Law Review*) (explaining that their studies are not conclusive either way, it appears that legalizing marijuana has no noticeable effect on crime rates).

63. Pyke, *supra* note 61.

64. *No Correlation Between Medical Marijuana Legalization, Crime Increase*, *supra* note 61.

65. *Id.*

66. CAL. GOV. CODE § 7282.5 (2014).

67. *Id.*

sale, distribution, manufacture, or trafficking of controlled substances.”⁶⁸ Accordingly, an individual could be held after they became eligible for release if they were “convicted of an offense involving the felony possession, sale, distribution, manufacture, or trafficking of” marijuana.⁶⁹

Under California’s existing law, the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) regulates California’s marijuana industry.⁷⁰ MAUCRSA integrates “the state’s medical-only regulations passed by the legislature (MCRSA) with the adult-use rules approved by the voters under [AUMA].”⁷¹ MAUCRSA underwent substantial amendments “based on the language passed in the budget to reconcile the MCRSA [the previous regulatory act for medical marijuana] and [AUMA].”⁷² MAUCRSA tends to follow the more lenient “industry-friendly rules of [AUMA].”⁷³

One of the most substantial changes allows “applicants to get licenses in different phases of the industry rather than restrict so-called vertical integration by allowing just a single kind of license.”⁷⁴ Other significant changes made by MAURSA include, “[eliminating] MCRSA’s independent distributor requirement, [authorizing] the issuance of temporary special-event licenses, and [dropping] the California residency requirement for license applicants.”⁷⁵

B. Federal Guidelines for Handling Marijuana Law

Congress passed the Controlled Substances Act (CSA) to prohibit “the manufacture, importation, possession, use and distribution of certain narcotics, stimulants, depressants, hallucinogens, anabolic steroids and other chemicals.”⁷⁶ Marijuana was listed as Schedule I, implying that it has a “high potential for abuse . . . no currently accepted medical use in treatment in the U.S . . . [and] a lack of accepted safety for use of the drug under medical supervision.”⁷⁷ The

68. *Id.*

69. *Id.*

70. *Cal NORML: A Summary of the Medical Cannabis Regulation Act (MCRSA)*, CAL. NORML (July 2017), http://www.canorml.org/news/A_SUMMARY_OF_THE_MEDICAL_MARIJUANA_REGULATION_AND_SAFETY_ACT [hereinafter NORML] (on file with *The University of the Pacific Law Review*).

71. *Id.*

72. An-Chi Tsou, *California’s Cannabis Laws: The Next Hurdle*, MANZURI L. (July 19, 2017), <http://www.manzurilaw.com/sb94> (on file with *The University of the Pacific Law Review*).

73. *Cal NORML*, *supra* note 70.

74. *Id.*

75. *Id.*

76. *CSA Schedules*, DRUGS.COM (May 4, 2014), <https://www.drugs.com/csa-schedule.html> (on file with *The University of the Pacific Law Review*).

77. Controlled Substances Act, 21 U.S.C. § 812 (2017).

CSA remains in effect; however, some states have passed laws allowing for the medical use of marijuana and a few have legalized its recreational use.⁷⁸

In 2009, under President Obama's administration, Deputy Attorney General David W. Ogden issued a memorandum to clarify the guidelines that federal prosecutors in states that had enacted laws authorizing the medical use of marijuana were to follow.⁷⁹ The memo stated that medical marijuana users, and those who provide medical users with marijuana, would not face Federal prosecution as long as they complied with State law.⁸⁰

In 2011, Deputy Attorney James Cole issued a memo to further clarify the guidelines for Federal prosecutors, including those laid out in the Ogden memo.⁸¹ The 2011 Cole Memo stated that individuals using medical marijuana in compliance with state law would still not be targeted, but individuals involved in cultivating, selling, or distributing marijuana for any purpose, as well as those who knowingly facilitate these activities may face federal prosecution.⁸² This change in policy was a sharp turn from how law enforcement interpreted the Federal guidelines prior to the 2011 Cole Memo.⁸³ Accordingly, the public started to become wary of future Federal crackdowns on medical marijuana.⁸⁴

In 2013, James Cole, an Obama Administration Deputy Attorney issued further guidance with respect to the federal government's position on marijuana enforcement in states that had legalized marijuana in their jurisdictions.⁸⁵ A key component of the 2013 Cole memo was its policy of letting states that had legalized marijuana and that had strong, effective regulatory systems enforce

78. Boldin, *supra* note 15.

79. Memorandum from David W. Ogden, Deputy Att'y Gen. on Investigations & Prosecutions in States Authorizing The Medical Use Of Marijuana to Selected U.S. Attorneys (Oct 19, 2009), <https://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states> (on file with *The University of the Pacific Law Review*).

80. *Id.*

81. Memorandum from James M. Cole, Deputy Att'y Gen. on Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use to All United States Attorneys (June 29, 2011), <http://files.ctctcdn.com/201bc6cf001/10f50403-6ee6-4e47-bbc3-ed48d1912bbb.pdf> (on file with *The University of the Pacific Law Review*).

82. *Id.*

83. See John Schroyer, *The Famous Marijuana Memos: Q&A with Former DOJ Deputy Attorney General James Cole*, MARIJUANA BUS. DAILY (July 27, 2016), <https://mjbizdaily.com/the-famous-marijuana-memos-qa-with-former-doj-deputy-attorney-general-james-cole/> (on file with *The University of the Pacific Law Review*) (explaining how many misread the Ogden memo and assumed it provided blanket protection for all individuals in compliance with state medical marijuana laws).

84. See *DOJ to Medical Pot Industry: Government Could Prosecute Dispensaries, Growers*, MARIJUANA BUS. DAILY (July 1, 2011), <https://mjbizdaily.com/doj-to-medical-marijuan-industry-federal-government-could-prosecute-dispensaries-growers/> (on file with *The University of the Pacific Law Review*) (noting how the letter would allow the federal government to prosecute medical marijuana dispensaries).

85. Memorandum from James M. Cole, Deputy Att'y Gen. on Guidance Regarding Marijuana Enforcement to All United States Attorneys (Aug. 29, 2013), <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (on file with *The University of the Pacific Law Review*).

their own laws.⁸⁶ President Obama’s administration took a “hands off” approach to marijuana enforcement in states that had enacted laws legalizing marijuana. The Trump Administration’s position, however, is not as clear.⁸⁷ If President Trump wanted to, he could easily withdraw the 2013 Cole Memo “with the stroke of a pen.”⁸⁸ In addition, Attorney General Jeff Sessions has voiced disapproval of President Obama’s marijuana policies, but has yet to wholly embrace or reject the 2013 Cole Memo.⁸⁹

The Rohrabacher–Farr Amendment (RFA) is a budget amendment that prohibits DOJ funds from being used to prevent states from implementing medical marijuana laws.⁹⁰ Representative Rohrabacher, who co-authored the bill, introduced it in 2003, but it was not passed until 2014.⁹¹ Representative Rohrabacher intended it to do more than “just prevent direct interference with state implementation; it [was intended to] also end federal medical cannabis raids, arrests, criminal prosecutions, and civil asset forfeiture lawsuits, as well as providing current medical cannabis prisoners with a way to petition for their release.”⁹²

One of the most significant cases involving the RFA was the 2016 case of *U.S. v. McIntosh*.⁹³ There, the court stated, “at a minimum, section 542 prohibits the 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.”⁹⁴ Thus, as long as the RFA remains in effect, the federal government is prohibited from prosecuting “conduct that is allowed by the state’s medical cannabis law.”⁹⁵

86. *Id.*

87. See Christopher Ingraham, *Sessions on Enforcing Federal Marijuana Laws: ‘It Won’t Be an Easy Decision’*, WASH. POST (Jan. 10, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/01/10/sessions-on-enforcing-federal-marijuana-laws-it-wont-be-an-easy-decision/> (on file with *The University of the Pacific Law Review*) (noting how Sessions’ anti-marijuana past, and Trump’s statement that marijuana is a states right issue is contradictory and thus leads to uncertainty).

88. Paul Payne, *Atty. General Nominee Major Buzzkill For Pot Industry?*, EMERALD REP. (Nov. 20, 2016), <http://www.emeraldreport.com/atty-general-nominee-major-buzzkill-pot-industry/> (on file with *The University of the Pacific Law Review*).

89. See Ingraham, *supra* note 87 (explaining that Sessions has neither voiced support for Obama-era rules, nor has he signaled his eagerness to get rid of them).

90. Ben Aldin, *California Bill Would Bar Officials From Aiding Federal Crackdown*, LEAFLY (Feb 28, 2017), <https://www.leafly.com/news/politics/california-bill-bar-officials-aiding-federal-crackdown> (on file with *The University of the Pacific Law Review*).

91. Somerset, *supra* note 30.

92. *Federal Marijuana Law*, AMERICANS FOR SAFE ACCESS, http://www.safeaccessnow.org/federal_marijuana_law [hereinafter *Americans For Safe Access*] (on file with *The University of the Pacific Law Review*).

93. *U.S. v. McIntosh*, 833 F.3d 1163 (2016).

94. *Id.*

95. *Federal Marijuana Law*, *supra* note 92.

Although the RFA provides protections for states that implement marijuana laws, the amendment must be renewed each fiscal year for it to remain in effect.⁹⁶ Although Congress renewed the amendment through September 2017, President Trump added a signing statement: “I will treat this provision consistently with my constitutional responsibility to take care that the laws be faithfully executed.”⁹⁷ Since marijuana remains illegal under federal law, this language suggests that President Trump is reserving the right to disregard the amendment entirely.⁹⁸ Further, Sessions personally asked Congress to “undo federal medical-marijuana protections” provided by the RFA so that he could prosecute medical-marijuana providers.⁹⁹

C. *Economic Context*

Under existing law, California is predicted to experience huge economic growth due to the expansion of recreational marijuana.¹⁰⁰ Employment statistics regarding California’s marijuana industry are rare because the state has not kept records since legalizing marijuana for medicinal use in 1996.¹⁰¹ Although some studies have been performed, analysts have criticized them for relying on “proxy data or invalid assumptions.”¹⁰² One study attempted to remedy the shortcomings of the previous studies by using official state data from Colorado.¹⁰³ Employment statistics relating to other states were then extrapolated using this official data.¹⁰⁴

96. Jacob Sullum, *The Federal Ban on Medical Marijuana Was Not Lifted*, REASON (Jan. 4, 2016), <http://reason.com/archives/2016/01/04/the-federal-ban-on-medical-marijuana-was> (on file with *The University of the Pacific Law Review*).

97. Donald J. Trump, *Statement by President Donald J. Trump on Signing H.R. 244 into Law*, WHITE HOUSE (May 5, 2017), <https://www.whitehouse.gov/the-press-office/2017/05/05/statement-president-donald-j-trump-signing-hr-244-law> (on file with *The University of the Pacific Law Review*).

98. See Ingraham, *supra* note 31 (noting that prior presidents have used similar signing statements to ignore policies they disagreed with).

99. Christopher Ingraham, *Jeff Sessions Personally Asked Congress to Let Him Prosecute Medical-Marijuana Providers*, WASH. POST (June 13, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/06/13/jeff-sessions-personally-asked-congress-to-let-him-prosecute-medical-marijuana-providers/> (on file with *The University of the Pacific Law Review*).

100. See *California Proposition 64, Marijuana Legalization* (2016), BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_64_Marijuana_Legalization_\(2016\)](https://ballotpedia.org/California_Proposition_64_Marijuana_Legalization_(2016)) [hereinafter Prop. 64 Ballotpedia] (on file with *The University of the Pacific Law Review*) (noting the potential tax revenue from legal marijuana could be as high as \$1 billion).

101. See Staggs, *supra* note 52 (explaining that there are no reliable records related to marijuana in California because California hasn’t kept records since passing Prop. 215).

102. Daniel Wheaton, *Legal Weed Could Generate More Than 100,000 Jobs*, SAN DIEGO UNION TRIB. (Nov. 1, 2016, 4:20 PM PST), <http://www.sandiegouniontribune.com/news/data-watch/sd-me-weed-jobs-20161101-story.html> (on file with *The University of the Pacific Law Review*).

103. *Id.*

104. See *id.* (explaining how researchers used Colorado’s data to make estimates about other states based on proportions).

The study suggested approving AUMA would create at least 130,432 jobs in California.¹⁰⁵ This estimate accounted for “everyone along the supply chain: from pot sellers to edible ‘chefs.’”¹⁰⁶ In another study, the University of the Pacific’s Center for Business and Policy Research, Eberhardt School of Business, and McGeorge School of Law concluded a more conservative number was realistic: nearly 20,000.¹⁰⁷ Before the 2016 vote, reports also predicted up to \$1 billion in annual tax revenue from marijuana¹⁰⁸ and millions in investment in California’s industry if AUMA passed.¹⁰⁹

After Californians passed AUMA, experts predicted the state’s marijuana market would grow from about \$2.8 billion per year in 2017 to \$5.8 billion per year in 2018.¹¹⁰ During this period, President Trump’s stance on marijuana was relatively unknown. On the one hand, he claimed he supported states’ rights on the issue. On the other, the administration had yet to take a firm stance.¹¹¹ After the Trump Administration first suggested “greater enforcement,” investors became increasingly hesitant to spend money on ventures with no security.¹¹² In

105. *Id.*

106. *Id.*

107. *What Proposition 64 Means for California Employers*, DELFINO MADDEN O’MALLEY COYLE KOEWLER, <http://delfinomadden.com/what-proposition-64-means-for-california-employers/> (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*).

108. Prop. 64 Ballotpedia, *supra* note 100.

109. See Kevin Smith, *These Marijuana Investors Are Ready To Spend Millions If California Passes Prop 64*, MERCURY NEWS (Nov. 9, 2016, 3:58PM), <http://www.mercurynews.com/2016/11/08/these-marijuana-investors-are-ready-to-spend-millions-if-california-passes-prop-64/> (on file with *The University of the Pacific Law Review*) (explaining how a private investment fund worth millions was being assembled in preparation for AUMA being approved).

110. Todd Campbell, *How Big Could the Opportunity Be for Marijuana Stocks in California?*, MOTLEY FOOL (Jan 22, 2017, 3:02 PM), <https://www.fool.com/investing/2017/01/22/how-big-could-the-opportunity-be-for-marijuana-sto.aspx> (on file with *The University of the Pacific Law Review*).

111. See Melia Robinson, *Trump Has Two Paths He Can Take on Marijuana Legalization—Here’s How They Could Affect You*, BUS. INSIDER (Jan. 28, 2017, 11:45 AM), <http://www.businessinsider.com/trump-on-marijuana-legalization-2017-1> (on file with *The University of the Pacific Law Review*) (explaining how it was extremely difficult to decipher Trump’s position on marijuana because he changed his mind so many times, and his administration had yet to take any action on federal marijuana laws); see also Jeremy Berke, *Here’s Where President-Elect Donald Trump Stands on Marijuana Legalization*, BUS. INSIDER (Nov. 9, 2016, 11:38 AM), available at <http://www.businessinsider.com/where-donald-trump-stands-on-weed-legalization-2016-11> (on file with *The University of the Pacific Law Review*) (noting Trump’s contradictory statements and positions on marijuana).

112. See Jennifer Kaplan, *Despite Trump Opposition, Investors Pour Money into Cannabis Industry*, CANNAFORNIAN NEWS (June 2, 2017), <http://www.thecannifornian.com/cannabis-business/despite-trump-opposition-investors-pour-money-cannabis-industry/> (on file with *The University of the Pacific Law Review*) (describing how some investors started to fear entering or continuing to invest in the marijuana industry after Sessions’s nomination); see also Todd Campbell, *Will Donald Trump’s Attorney General Jeff Sessions Undermine Legal Marijuana?*, MOTLEY FOOL (June 14, 2017, 3:02 PM), <https://www.fool.com/investing/2017/06/14/will-donald-trumps-attorney-general-jeff-sessions.aspx> (on file with *The University of the Pacific Law Review*) (describing how Trump’s nomination of Sessions created uncertainty for investors, which led to a decline in marijuana stocks).

response, experts began noting the potential loss in tax revenue due to future uncertainty.¹¹³

D. Constitutionality

According to the Supremacy Clause, federal law is the “supreme law of the land.”¹¹⁴ If Congress and a state pass “laws that govern the same activity . . . Congress can . . . preempt (i.e., void) [the] state laws if it so desires.”¹¹⁵ Thus, the key detail “in every preemption case is . . . Congress’s preemptive intent.”¹¹⁶

The Supreme Court notes, “when Congress speaks directly to preemption, there is no need to infer congressional intent.”¹¹⁷ If Congress does not mention preemption, however, the Court can still infer congressional intent to preempt if the State law conflicts with federal law.¹¹⁸ There are two types of conflict: “direct conflict and obstacle conflict.”¹¹⁹ Direct “conflict arises when it is physically impossible to comply with both state and federal law.”¹²⁰

On the other hand, obstacle “conflict arises anytime state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”¹²¹ Thus, preemption under the CSA does not require a state’s law to directly conflict; all it requires is that the “law would still arguably undermine Congress’s goal of combating drug abuse.”¹²² Courts have not yet been presented with a situation directly analogous to AB 1578 where a state refuses to enforce federal marijuana law.¹²³ Therefore, it is unclear whether federal law would preempt AB 1578 if it had passed.¹²⁴

113. See Sean Williams, *Marijuana Stock Investors in Awe as California Goes Toe-to-Toe With the Trump Administration*, MOTLEY FOOL (June 11, 2017 11:03 AM), <https://www.fool.com/investing/2017/06/11/marijuana-stock-investors-in-awe-as-california-goe.aspx> (on file with *The University of the Pacific Law Review*) (noting the marijuana industry’s projected \$1 billion in tax revenue may be in jeopardy if Trump increases enforcement).

114. See Robert Mikos, *Preemption Under the Controlled Substances Act*, 16 J. OF HEALTH CARE L. & POL’Y 5, 9 (2013) (explaining the Supremacy Clause and preemption).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 10.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. See Chris Weigant, *California Considers Historic “Weed Sanctuary” Status*, HUFFINGTON POST (Apr. 19, 2017, 9:49 PM), http://www.huffingtonpost.com/entry/california-considers-historic-weed-sanctuary-status_us_58f812c4e4b0b6ca13416110 (on file with *The University of the Pacific Law Review*) (noting that if AB 1578 was enacted, it would be the start of a new battle between federal and state government).

¹²⁴ *Id.*

The Tenth Amendment states, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹²⁵ Courts have interpreted this to stand for the proposition “that states do not have to be active participants in the enforcement or effectuation of federal acts or regulatory programs.”¹²⁶ The first time the Court addressed such an issue was the 1842 case of *Prigg v. Com. of Pennsylvania*.¹²⁷ There, the court held that while the states could not physically impede the Fugitive Slave Act, they were not required to assist in capturing runaways.¹²⁸

Furthermore, the Court reaffirmed that idea when looking at a similar issue more recently in *Printz v. U.S.*¹²⁹ There, it held that, “[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”¹³⁰ In *New York v. U.S.*, the Court noted the federal government’s inability to compel state action may lead to situations where the “states will at times have the power to frustrate effectuation of some programs.”¹³¹

E. Impetus for AB 1578

During his campaign, President Trump supported a state’s right to choose how to handle medical marijuana legislation—but nominating Jeff Sessions as Attorney General might indicate otherwise.¹³² Sessions previously stated, “marijuana is not the kind of thing that ought to be legalized.”¹³³ Further, during his confirmation hearing, Sessions stated that, “[he would not] commit to never enforcing federal law” with respect to marijuana.¹³⁴ Similar to President Trump’s signing statement on the RFA, Session’s statement creates significant uncertainty

125. U.S. CONST. amend. X.

126. Mike Maharrey, *The Anti-Commandeering Doctrine: An Overview of Four Major Supreme Court Cases*, TENTH AMENDMENT CTR. (Feb. 3, 2015), <http://tenthamendmentcenter.com/2015/02/03/anti-commandeering-the-legal-basis-for-refusing-to-participate/> (on file with *The University of the Pacific Law Review*).

127. *Id.*

128. Boldin, *supra* note 15.

129. Maharrey, *supra* note 126.

130. *Id.*

131. *City of New York v. U.S.*, 179 F.3d 29, 35 (2d Cir. 1999).

132. McGreevy, *supra* note 32.

133. Tom Huddleston, Jr., *What Jeff Sessions Said About Marijuana in His Attorney General Hearing*, FORTUNE, (Jan. 10, 2017), <http://fortune.com/2017/01/10/jeff-sessions-marijuana-confirmation-hearing/> (on file with *The University of the Pacific Law Review*).

134. *Id.*

as to whether and to what extent President Trump's administration will enforce federal laws that prohibit marijuana in states that have legalized it.¹³⁵

Voters in California legalized marijuana for recreational use when they passed AUMA, but their will could be overturned if the current administration enforces federal laws prohibiting marijuana.¹³⁶ Californians have long been suspicious of the changes and modifications the U.S. Department of Justice has made regarding its position on enforcing marijuana laws in the past.¹³⁷ With these suspicions in mind, California legislators took steps to mitigate the risk of a potential change to federal law with AB 1578.¹³⁸

III. AB 1578

Assembly Member Jones-Sawyer introduced AB 1578 to prohibit state and local authorities from assisting the federal government in investigating marijuana activity that is allowed in California, unless federal authorities obtain a court order.¹³⁹ AB 1578 would not have expressly contradicted nor would it have implicitly undermined the CSA.¹⁴⁰ It would have merely codified California's constitutional right to refrain from enforcing federal laws by prohibiting cooperation absent a court order.¹⁴¹

AB 1578 would have prohibited "a state or local agency . . . [from using] . . . agency money, facilities, property, equipment, or personnel to assist a federal agency to investigate, detain, detect, report, or arrest a person for . . . marijuana . . . activity that is authorized or allowed under [the] law in . . . California."¹⁴² AB 1578 also would have prohibited "a state or local agency. . . [from responding] . . . to a request made by a federal agency or federal entity for information about an individual who is authorized or allowed under . . . [California] law to possess

135. Compare Trump, *supra* note 97 (signaling that President Trump may disregard the RFA because marijuana is still illegal under federal law), and Huddleston, *supra* note 133 (signaling that Sessions is reserving the right to enforce federal laws, such as marijuana laws).

136. Morimune, *supra* note 16.

137. See generally Schroyer, *supra* note 83 (explaining how the marijuana industry read too much into the Ogden Memo, so the Cole Memos seemed like policy reversals).

138. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3–4 (Apr. 18, 2017) (explaining how the suspicions of a future crackdown on marijuana prompted the creation of AB 1578).

139. *Id.*

140. See *id.* (explaining how AB 1578's provisions don't directly conflict with the CSA, they just make cooperation with federal authorities more difficult).

141. See *Printz v. United States*, 521 U.S. 898, 935 (1997) (noting that states cannot be required to enforce federal laws).

142. SENATE COMM. ON PUB. SAFETY, MARIJUANA AND CANNABIS PROGRAMS: COOPERATION WITH FEDERAL AUTHORITIES 1 (June 27, 2017), available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1578# (on file with *The University of the Pacific Law Review*).

. . . marijuana, if the request is made for the purposes of enforcing the Controlled Substances Act.”¹⁴³

In addition, AB 1578 would have prohibited “a state or local agency . . . [from providing] information about a person who has applied for or received a license to engage in commercial marijuana or commercial medical cannabis activity pursuant to MCRSA or AUMA, if the request is made for the purposes of enforcing the . . . Controlled Substances Act.”¹⁴⁴ Finally, AB 1578 would have prohibited “a state or local agency . . . [from transferring] an individual to federal law enforcement, or [detaining] an individual . . . [for] federal authorities, for marijuana . . . conduct” that is allowed under California law.¹⁴⁵

IV. ANALYSIS

Two groups most strongly support legalizing marijuana: those that believe in marijuana’s medicinal relief, and marijuana industry investors.¹⁴⁶ The most fervent opposition has equally strong convictions, either due to their interest in preserving the status quo,¹⁴⁷ or because of their belief that consuming marijuana is immoral.¹⁴⁸ Had it passed, AB 1578 might have significantly impacted both sides of marijuana legalization.¹⁴⁹

A. Positive Effects of AB 1578

AB 1578 would have prevented the federal government from easily enforcing marijuana laws by requiring a court order for state or local agencies to provide assistance.¹⁵⁰ Many of the potential benefits of AB 1578 were a result of the

143. *Id.*

144. *Id.*

145. *Id.*

146. *See* Smith, *supra* note 109 (explaining how potential investors show strong support for legalizing recreational marijuana).

147. *See* Patrick McGreevy, *California Lawmakers Want to Block Police From Helping Federal Drug Agents Take Action Against Marijuana License Holders*, L.A. TIMES (Mar 23, 2017, 12:05 AM PST), <http://www.latimes.com/politics/la-pol-sac-pot-enforcement-legislation-20170323-story.html> (on file with *The University of the Pacific Law Review*) (discussing how some law enforcement officers strongly oppose the bill because of their interest in keeping their policies the same).

148. Matthew J. Santucci, *The Cultural Dichotomy: In Defense of Marijuana Legalization*, FORDHAM POL. REV. (Apr. 26, 2017), <http://fordhampoliticalreview.org/the-cultural-dichotomy-in-defense-of-marijuana-legalization/> (on file with *The University of the Pacific Law Review*).

149. *See Infra* Sections A & B (discussing how AB 1578 will provide protections to those in favor, and will continue policies which the opposition disapproves of).

150. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 1 (Apr. 18, 2017) (explaining how AB 1578 requires federal authorities to get a court order before receiving assistance from local agencies).

marijuana-permissive policies that developed under previous administrations.¹⁵¹ Prior to the Trump administration, legal marijuana in California was expected to generate numerous benefits.¹⁵² For California, ensuring that future benefits accrue is as simple as not changing anything and continuing to operate under the more lenient policies seen during President Obama's administration.¹⁵³ After President Trump's election, however, California's marijuana supporters feared the federal government would attempt to increase enforcement.¹⁵⁴ AB 1578 aimed to prevent California's state and local tax funded resources from being used by the current presidential administration to enforce federal marijuana laws.¹⁵⁵

1. How Will AB 1578 Affect California's Economy?

One of the most widely discussed benefits of legalizing marijuana is the huge economic opportunity it presents.¹⁵⁶ The following Subpart will examine the potential effects of AB 1578 on marijuana-related investments.¹⁵⁷ Then it will discuss AB 1578's potential effect on job creation.¹⁵⁸ Finally, this Subpart will analyze AB 1578's potential effect on tax revenue in California.¹⁵⁹

151. See *Prop. 64 Official Voter Information Guide*, VOTER GUIDES, <http://voterguide.sos.ca.gov/en/propositions/64/analysis.htm> (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*) (describing the potential tax revenue from marijuana prior to Trump's election); see also Ike Brannon, *Legalize Marijuana and Reduce Deaths From Drug Abuse*, HILL (July 8, 2016, 7:34 AM EDT), <http://thehill.com/blogs/pundits-blog/healthcare/286965-legalize-marijuana-and-reduce-deaths-from-drug-abuse> (on file with *The University of the Pacific Law Review*) (explaining the expected decrease in opioid deaths from legalizing marijuana prior to Trump); see also Wheaton, *supra* note 102 (explaining that legal marijuana was expected to generate over 100,000 jobs in California prior to Trump).

152. *Id.*

153. See Hamilton, *supra* note 17 (discussing legal marijuana's huge potential for job creation, but noting that the "rosy projection" is contingent upon federal enforcement of marijuana laws staying the same).

154. See Kaplan, *supra* note 112 (describing how some investors started to fear entering or continuing to invest in the marijuana industry after Session's nomination); see also Campbell, *supra* note 112 (describing how Trump's nomination of Session created uncertainty for investors, which led to a decline in marijuana stocks).

155. Morimune, *supra* note 16.

156. See *Prop. 64 Official Voter Information Guide*, *supra* note 151 (noting the potential tax revenue from legal marijuana could be as high as \$1 billion); see also Wheaton, *supra* note 102 (explaining that legal marijuana was could generate over 100,000 jobs in California); see also Smith, *supra* note 109 (noting that investors were ready to spend millions on California's marijuana industry if AUMA passed).

157. See *infra* Parts IV.i.

158. See *infra* Parts IV.ii.

159. See *infra* Parts IV.iii.

2018 / Interaction Between State and Federal Law Enforcement

a. AB 1578 Might Have Increased Marijuana-Related Investment in California

Initially, the Trump administration and its nomination of Jeff Sessions for Attorney General had little effect on the rising rate and success of marijuana-related investments.¹⁶⁰ But Sean Spicer's comments in March of 2017 had a negative impact on marijuana markets.¹⁶¹ He predicted "greater enforcement" of federal marijuana laws and as a result, both large and small marijuana stocks recorded losses after Spicer's announcement.¹⁶² Thus, it is clear businesses were willing to invest under the permissive policies enacted before President Trump, but were unwilling when policies were predicted to shift in the direction of greater enforcement.¹⁶³

A statute that ensures that the effects of Obama-era marijuana policies continue to remain in force could ease investors' fears and help to facilitate future growth in the industry.¹⁶⁴ Past trends demonstrate businesses are willing to invest in the marijuana industry—even with the conflicting federal law—so long as they have assurances federal authorities will not target them if they are compliant with state law.¹⁶⁵ Thus, since AB 1578 would have effectively ensured that federal authorities could not easily target persons compliant with state law,¹⁶⁶

160. See Debra Borchardt, *Marijuana Industry Raises Over \$1 Billion In 2016*, FORBES (Dec. 21, 2016 9:04 AM), <https://www.forbes.com/sites/debraborchardt/2016/12/21/marijuana-industry-raises-over-1-billion-in-2016/#5cc6a1ed391d> (on file with *The University of the Pacific Law Review*) (describing the continued growth of the marijuana industry that initially occurred, even after Trump was elected).

161. Aaron Smith, *Trump Is a Buzzkill For Pot Stocks*, CNN MONEY (Mar. 1, 2017, 3:02 PM EST), <http://money.cnn.com/2017/03/01/investing/marijuana-stocks-trump/?iid=EL> (on file with *The University of the Pacific Law Review*) (describing the decline in marijuana stocks after Spicer's announcement about greater enforcement).

162. *Id.*

163. Compare Borchardt, *supra* note 160 (describing the continued growth of the marijuana industry that occurred after Trump was elected, but before the announcement about greater enforcement), with Smith, *supra* note 161 (describing the decline in marijuana stocks after Spicer's announcement about "greater enforcement").

164. See Williams, *supra* note 113 (explaining how AB 1578 could provide some protection for marijuana investors, easing their fears).

165. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3-4 (Apr. 18, 2017) (explaining that the Obama-era policies didn't target individuals who were compliant with state law); see also Debra Borchardt, *Sessions Confirmed As Attorney General, Wary Cannabis Industry Extends Olive Branch*, FORBES (Feb. 8, 2017), <https://www.forbes.com/sites/debraborchardt/2017/02/08/sessions-confirmed-as-attorney-general-wary-cannabis-industry-extends-olive-branch/#682858d8474b> (on file with *The University of the Pacific Law Review*) (describing the growth of the marijuana industry under the Obama-era policies).

166. See Oscar Pascual, *California Introduces Bill to Block Police From Assisting Federal Raids on Legal Pot*, SF GATE (Mar 24, 2017, 9:58 AM PST), <http://blog.sfgate.com/smellthetruth/2017/03/24/california-introduces-bill-to-block-police-from-assisting-federal-raids-on-legal-pot/> (on file with *The University of the Pacific Law Review*) (explaining how difficult and dangerous it can be for federal authorities to enforce federal marijuana law without help from state or local authorities); see also Aldin, *supra* note 90 (noting that federal enforcement of marijuana laws would require "tremendous" resources).

businesses would have been less hesitant to invest in California's marijuana industry.¹⁶⁷

b. AB 1578 Might Have Encouraged Job Creation

One caveat about the job-creation estimates is that the studies are contingent upon whether federal authorities continue the Obama-era policy of letting states that have legalized marijuana use the regulatory systems they have put in place.¹⁶⁸ The Trump administration has yet to take any concrete steps towards changing the federal authorities' approach to marijuana enforcement, but some of its actions may signal potential changes.¹⁶⁹ Spicer's statement about expecting greater enforcement and Sessions' request to Congress are the most solid indications of how the Trump administration plans to enforce federal marijuana laws.¹⁷⁰ So to the extent the Trump administration does start to enforce federal marijuana laws, AB 1578 may help create jobs in California's marijuana industry by providing protections to people who comply with state law.¹⁷¹

Even if the actual number of jobs created in California by the marijuana industry is on the low-end of the estimates (20,000), it would still be significant considering the entire coal industry—which played an important role in President Trump's campaign—only employs about 76,000 people throughout the entire U.S.¹⁷² In addition, these estimates only account for the near future; by

167. See Williams, *supra* note 113 (explaining how AB 1578 could provide some protection for marijuana investors, easing their fears).

168. See Hamilton, *supra* note 17 (discussing legal marijuana's huge potential for job creation, but noting that the "rosy projection" is contingent upon federal enforcement of marijuana laws staying the same).

169. See John Wagner & Matt Zaptosky, *Spicer: Feds Could Step Up Enforcement Against Marijuana Use in States*, WASH. POST (Feb 23, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/02/23/spicer-feds-could-step-up-anti-pot-enforcement-in-states-where-recreational-marijuana-is-legal/> (on file with *The University of the Pacific Law Review*) (noting that White House press secretary Sean Spicer said that he expects states to be subject to "greater enforcement" of federal laws against marijuana use); see also Sean Williams, *Surprise! Jeff Sessions Wants to Trample States' Rights and Prosecute Medical Marijuana Businesses*, MOTLEY FOOL (June 24, 2017, 9:13 AM), <https://www.fool.com/investing/2017/06/24/surprise-jeff-sessions-wants-to-trample-states-rig.aspx> (on file with *The University of the Pacific Law Review*) (Sessions sent a letter to Congressional leaders requesting the repeal of the Rohrabacher-Farr Amendment so that he could enforce federal marijuana laws).

170. See Wagner & Zaptosky, *supra* note 169 (noting that White House press secretary Sean Spicer said that he expects states to be subject to "greater enforcement" of federal laws against marijuana use); see also Williams *supra* note 169 (Sessions sent a letter to Congressional leaders requesting the repeal of the Rohrabacher-Farr Amendment so that he could enforce federal marijuana laws).

171. See Hamilton, *supra* note 17 (discussing how the large growth in jobs is contingent upon Obama-era policies remaining in force, since AB 1578 will do just that, it may help to create jobs).

172. Christopher Ingraham, *The Entire Coal Industry Employs Less People than Arby's*, WASH. POST (Mar. 31, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/03/31/8-surprisingly-small-industries-that-employ-more-people-than-coal/> (on file with *The University of the Pacific Law Review*) (explaining that coal, an industry which played a large role in Trump's campaign, only employed about 76,000 people in the United States as of 2014).

2020, it is estimated that the marijuana industry will employ 250,000 people nationwide.¹⁷³ While not all of this growth will be attributed to California's marijuana industry, it is fair to say that a large portion of the growth will be because California is the most populous state in the United States.¹⁷⁴

AB 1578 might have helped to create marijuana related jobs in California by ensuring that protections provided under the Obama administration would persist, even if the federal government attempts to take a different approach.¹⁷⁵ Without the protection currently provided under the Obama-era policies, it is likely that the marijuana industry will continue to grow, but not anywhere near the scale predicted.¹⁷⁶

c. *AB 1578 Might Have Increased Tax Revenue*

Leading up to the vote on AUMA, one of the main arguments for why recreational marijuana should be legalized was the enormous potential for tax revenue.¹⁷⁷ Many analysts predict that if marijuana were legalized for recreational use, it would lead to an increase of \$1 billion in tax revenue annually, and as much as \$11 billion over the next decade.¹⁷⁸ Two assumptions about these estimates are worth noting.¹⁷⁹ First, the estimated increases assume that all marijuana sold on the black market is untaxed.¹⁸⁰ Since taxes are currently

173. Melia Robinson, *Legal Marijuana Could Overtake Manufacturing in Job Creation By 2020*, BUS. INSIDER (Mar. 3, 2017, 1:45 PM), <http://www.businessinsider.com/legal-marijuana-job-creation-projections-2017-3> (on file with *The University of the Pacific Law Review*).

174. See Katy Steinmetz, *7 Reasons President Trump is Unlikely to Fight Legal Marijuana*, TIME (Dec. 7, 2016), <http://time.com/4594445/legal-marijuana-trump-sessions-policy/> (on file with *The University of the Pacific Law Review*) (noting that California is the most populated state).

175. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3–4 (Apr. 18, 2017) (explaining that California's marijuana industry was provided protections under the Obama administration, which AB 1578 intends to continue).

176. See Keith Speights, *How Big Will the Trump Slump Be for Marijuana Stocks?*, MOTLEY FOOL (May 5, 2017, 11:04AM), <https://www.fool.com/investing/2017/03/05/how-big-will-the-trump-slump-be-for-marijuana-stoc.aspx> (on file with *The University of the Pacific Law Review*) (explaining that if the Trump administration successfully increased enforcement on recreational marijuana, it could decrease the market size for marijuana growers from 6.7 to 1.5 million consumers, however, the medical market could still expand).

177. *Proposition 64 Arguments and Rebuttals*, OFFICIAL VOTER INFO. GUIDE, <http://voterguide.sos.ca.gov/en/propositions/64/arguments-rebuttals.htm> (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*).

178. *Id.*; *Proposition 64*, LEGIS. ANALYST'S OFFICE (Nov. 8, 2016), <http://www.lao.ca.gov/BallotAnalysis/Proposition?number=64&year=2016> (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*).

179. See *id.* (noting that collecting unpaid taxes would bring in \$1 billion in revenue); see also Hamilton, *supra* note 17 (explaining that the future where legal marijuana generates billions of dollars in sales is contingent upon Trump not increasing enforcement).

180. *Proposition 64 Arguments and Rebuttals*, *supra* note 177

not being collected for these transactions, beginning to collect any sort of tax would lead to marked increases.¹⁸¹

Second, the estimates assumed that the Trump administration would not increase federal enforcement of marijuana laws.¹⁸² These estimates were generated during a period of confusion when the Trump administration's position on marijuana laws was relatively unknown.¹⁸³ After the Trump administration's position became clear, experts began to note the potential loss in tax revenue.¹⁸⁴ Some conservatively claimed the "revenue [would merely be] in jeopardy if the Trump administration tightened federal regulations surrounding marijuana."¹⁸⁵ Others more boldly predicted that increased enforcement could "endanger hundreds of millions of dollars in state tax revenue."¹⁸⁶ Regardless of the specific amount, it is clear that AB 1578 and laws like it would have helped to ensure higher levels of tax revenue by preventing federal authorities from easily targeting state law compliant marijuana users.¹⁸⁷

2. *How Would AB 1578 Have Affected Public Health?*

A decrease in human opioid deaths is a concrete benefit of legalizing marijuana.¹⁸⁸ A JAMA Network study shows states with medical marijuana laws had "twenty-five percent fewer opiate overdose deaths than states without such laws."¹⁸⁹ Further, the effect appeared to grow over time, likely because more people took advantage of the programs each year.¹⁹⁰

Considering this, the inverse may have the opposite effect.¹⁹¹ If the federal government were to increase enforcement of marijuana laws, that would lead to a decrease in people taking advantage of legal marijuana programs.¹⁹² In turn, this

181. *Id.*; see also *Proposition 64*, *supra* note 178 (noting that collecting unpaid taxes would bring in \$1 billion in revenue).

182. See Hamilton, *supra* note 17 (explaining that the future where legal marijuana generates billions of dollars in sales is contingent upon Trump not increasing enforcement).

183. See Ingraham, *supra* note 87 (noting how Session's anti-marijuana past, and Trump's belief that marijuana is a states right issue is contradictory and thus leads to uncertainty).

184. Williams, *supra* note 113.

185. *Id.*

186. Aldin, *supra* note 90.

187. See *id.* (explaining how "widespread enforcement could endanger hundreds of millions of dollars in tax revenue").

188. See Ingraham, *supra* note 53 (discussing the trend of decreasing deaths from opioids in states that legalized marijuana).

189. *Id.*

190. *Id.*

191. See *id.* (noting the trend increases annually, likely because more people take advantage of the programs each year, but if less people enrolled each year, this could lead to a trend of increasing deaths).

192. *Id.*

could lead to a growing trend of deaths by opiates.¹⁹³ AB 1578 would have made it more difficult, practically, for the federal government to increase enforcement of federal marijuana laws by forcing them to use their own man power, thereby,¹⁹⁴ ensuring that the number of people taking advantage of the programs continues to rise.¹⁹⁵ Thus, AB 1578 would have ensured that the trend of decreasing deaths by opiates continued into the future.¹⁹⁶

3. What Effect Will AB 1578 have on Voter Efficacy?

In 1996, 55.58% of Californians voted to allow the medicinal use of marijuana¹⁹⁷ and in 2016, 57.13% voted to allow recreational marijuana use.¹⁹⁸ These numbers demonstrate that Californians overwhelmingly support marijuana legalization.¹⁹⁹ The recent developments and positive trends predicted in California's marijuana industry did in fact materialize, but they will only continue to do so if the federal government does not enforce federal marijuana laws to a greater degree.²⁰⁰ According to AB 1578's authors, the will of California's voters and the legislature would be undermined if the Trump administration were allowed to force local and state authorities to assist in enforcing federal marijuana laws.²⁰¹

In the city of Vallejo, 57.6% voted to allow recreational marijuana in California.²⁰² Vallejo's elected representative, Assemblyman Tim Grayson, however, voted against AB 1578, citing public safety as his biggest concern.²⁰³ The president of a local marijuana business stated that she was "surprised" by

193. *Id.*

194. See Pascual, *supra* note 166 (explaining how difficult and dangerous it can be for federal authorities to enforce federal marijuana law without help from state or local authorities); see also Aldin, *supra* note 90 (noting that federal enforcement of marijuana laws would require "tremendous" resources).

195. See Ingraham, *supra* note 53 (explaining how the trend of decreasing opiate deaths seems to increase as time goes on).

196. *Id.*

197. *California Proposition 215, the Medical Marijuana Initiative (1996)*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_215,_the_Medical_Marijuana_Initiative_\(1996\)](https://ballotpedia.org/California_Proposition_215,_the_Medical_Marijuana_Initiative_(1996)) (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*).

198. Prop. 64 Ballotpedia, *supra* note 100.

199. See *California Voters Overwhelmingly Approve Marijuana Legalization*, *supra* note 46.

200. See Hamilton, *supra* note 17 (explaining that the future where legal marijuana generates vast tax revenue is contingent upon Trump not increasing enforcement).

201. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3–4 (Apr. 18, 2017).

202. *Solano County's Updated Election Day Results*, DAILY REPUBLIC (Nov. 9, 2016), <http://www.dailyrepublic.com/solano-news/fairfield/solano-county-election-day-results-nov-8-2016/> (on file with *The University of the Pacific Law Review*).

203. John Glidden, *Assembly Approves Cannabis Protection; Grayson Votes Against*, TIMES HERALD LEGISLATURE (June 6, 2017, 4:57 PM PDT), <http://www.timesheraldonline.com/article/NH/20170606/NEWS/170609912> (on file with *The University of the Pacific Law Review*).

Grayson's vote and that it was like saying, "I don't care about the views of my constituents."²⁰⁴ Like voters who are upset that Hilary Clinton won the popular vote but lost the election, Vallejo constituents are upset that Grayson did not heed their votes.²⁰⁵ Because Californians overwhelmingly support marijuana legalization,²⁰⁶ enforcement of federal marijuana laws using California's resources would be contrary to the voters' will.²⁰⁷ AB 1578 would have reinforced voter faith in California's system by ensuring that California's resources were not used to enforce federal marijuana laws that are contrary to the will of California's voters, should the Trump Administration decide to increase enforcement of federal marijuana laws.²⁰⁸

B. Argument by Opponents of AB 1578

Many arguments made by AB 1578's supporters are not novel.²⁰⁹ They are simply reiterating the arguments that formed the basis for the Obama-era approach in the first place.²¹⁰ The opponents' arguments, however, introduce new perspectives because they relate to the anti-cooperation aspect of AB 1578 rather than the marijuana-permissive aspect.²¹¹ The following section will discuss how AB 1578 could have affected public safety.²¹² Then, it will discuss how AB 1578 could have affected cooperation with state and local authorities.²¹³ Next, this section will discuss what effect AB 1578 would have had on rule of law.²¹⁴

204. *Id.*

205. *Id.*; see also Eric Levenson, 'Not My President's Day' Protesters Rally to Oppose Trump, CNN (Feb. 21, 2017, 1:18AM ET), <http://www.cnn.com/2017/02/20/us/not-my-presidents-day-protests/index.html> (on file with *The University of the Pacific Law Review*) (discussing the anger that some felt over Trump losing the popular vote but winning the election because it is not representative of the will of the people).

206. See *California Voters Overwhelmingly Approve Marijuana Legalization*, *supra* note 46.

207. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3–4 (Apr. 18, 2017); see also Steinmetz, *supra* note 174 (explaining that since 28 states have legalized marijuana, waging a war on marijuana would be contrary to the will of many voters).

208. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3–4 (Apr. 18, 2017).

209. Michael Vitiello, *Why the Initiative Process Is the Wrong Way to Go: Lessons We Should Have Learned from Proposition 215*, 43 MCGEORGE L. REV. 63, 63 (2013) (describing the arguments made during a debate about legalization as "familiar" and "unenlightening" because they were the same ones that have been made in the past).

210. See Hamilton, *supra* note 17 (discussing legal marijuana's huge potential for job creation, but noting that the "rosy projection" is contingent upon federal enforcement of marijuana laws staying the same).

211. See Glidden, *supra* note 203 (noting that AB 1578 "interferes with local law enforcement's ability to work with other agencies").

212. *Infra* Part IV.B.1.

213. *Infra* Part IV.B.2.

214. *Infra* Part IV.B.3.

Finally, it will discuss whether AB 1578 would have violated the 2013 Cole Memo.²¹⁵

1. *How Would AB 1578 Have Affected Public Safety?*

Opponents of AB 1578 argue that existing laws allowing for marijuana and the protections provided by AB 1578 make the public less safe.²¹⁶ Specifically, they argue that AB 1578 could decrease public safety by increasing violent crime²¹⁷ or increasing the number of deaths from driving under the influence of marijuana.²¹⁸ Attorney General Jeff Sessions recently expressed his concern about increasing violence, “[e]xperts are telling me there’s more violence around marijuana than one would think and there’s big money involved.”²¹⁹ Proponents of legalization were surprised when they heard this comment because numerous studies have suggested exactly the opposite.²²⁰ Rather than increasing the rate of violent crime, legalizing marijuana can either have no effect,²²¹ or it can decrease the rate of violent crimes.²²² Given the general consensus on these types of studies, it is unlikely that AB 1578 would have increased the rate of violent crime in California.²²³

Opponents of AB 1578 also cite increased rates of death from driving under the influence of marijuana as a concern.²²⁴ With some studies claiming that legalizing marijuana increases deaths from DUI,²²⁵ and some claiming it

215. *Infra* Part IV.B.4.

216. McGreevy, *supra* note 57 (explaining how some opponents cite a study that claims that states that legalized marijuana saw more marijuana-related traffic deaths); *see also No Correlation Between Medical Marijuana Legalization, Crime Increase, supra* note 61 (explaining how some argue that marijuana leads to higher crime rates).

217. Pyke, *supra* note 61 (noting how Sessions claimed that marijuana was linked to violence).

218. *See* McGreevy, *supra* note 57 (explaining how some opponents cite a study that claims that states that legalized marijuana saw more marijuana-related traffic deaths).

219. Pyke, *supra* note 61.

220. *See id.* (explaining that violent crime rates tend to decrease where marijuana is legalized); *see also No Correlation Between Medical Marijuana Legalization, Crime Increase, supra* note 61 (explaining that legalizing marijuana is not an indicator of increased crime, rather, it may be the opposite).

221. *See* Dills et al., *supra* note 62 (explaining that their studies are not conclusive either way, it appears that legalizing marijuana has no noticeable effect on crime rates)

222. *See* Pyke, *supra* note 61 (explaining that violent crime rates tend to decrease where marijuana is legalized).

223. *See* Dills et al., *supra* note 62 (explaining that their studies are not conclusive either way, it appears that legalizing marijuana has no noticeable effect on crime rates); *see also* Pyke, *supra* note 61 (explaining that violent crime rates tend to decrease where marijuana is legalized).

224. McGreevy, *supra* note 57.

225. *Id.* (noting that the RMHIDTA study found that states that legalized marijuana saw increased marijuana-related deaths); *see also* Johnson, *supra* note 57 (explaining that since Washington legalized marijuana, there has been a significant increase in fatal crashes involving marijuana).

decreases deaths from DUI,²²⁶ there is no clear consensus. However, the results of both studies showing an increase in DUI deaths should be taken with a grain of salt.²²⁷ The RMHIDTA study was based on “marijuana-related” deaths, and the AAA study was based on “The percentage of drivers involved in fatal crashes who recently used marijuana.”²²⁸ Both studies acknowledge the weakness of their unit of measurement, and concede that, “testing positive for THC doesn’t necessarily mean the driver was impaired or [even] at fault for the crash.”²²⁹ Further, “The AAA report added that many marijuana-positive drivers also had alcohol and other drugs in their system, ‘which in some cases likely contributed more significantly to the crash than did the THC.’”²³⁰ Although both studies suggesting that marijuana increases the rate of fatal DUI’s may have weaknesses, the existence of potentially conflicting results means it would be improper to conclude that AB 1578 would have certainly decreased the death rate from driving under the influence of marijuana.²³¹ However, it is safe to say that it is likely that AB 1578 would not have endangered public safety in terms of increasing violent crime rates.²³²

2. *How Would AB 1578 Have Affected Cooperation with State and Local Authorities?*

A major concern of many law enforcement officers and lawmakers was that AB 1578 was overly restrictive because it unnecessarily prevented cooperation with federal authorities.²³³ AB 1578 would have prevented a state or local agency from expending resources to assist federal authorities, responding to a request by federal authorities, providing information to federal authorities, or transferring an individual to federal authorities without a court order.²³⁴ Opponents of AB 1578

226. Columbia Study, *supra* note 57.

227. See Vanessa Schipani, *Unpacking Pot’s Impact in Colorado*, FACTCHECK (Aug. 19, 2016), <http://www.factcheck.org/2016/08/unpacking-pots-impact-in-colorado/> (on file with *The University of the Pacific Law Review*) (noting how both studies caution that “marijuana-related” or testing positive for THC “doesn’t necessarily mean the driver was impaired or at fault for the crash”).

228. *Id.*

229. *Id.*

230. *Id.*

231. See *id.* (noting that both studies fail to conclusively prove that legalizing marijuana leads to surges in traffic fatalities); see also Columbia Study, *supra* note 57 (noting that traffic deaths tend to fall in states that have legalized marijuana).

232. See Pyke, *supra* note 61 (explaining that violent crime rates tend to decrease where marijuana is legalized), see also Dills et al., *supra* note 62 (explaining that their studies are not conclusive either way, it appears that legalizing marijuana has no noticeable effect on crime rates).

233. See Glidden, *supra* note 203 (noting that AB 1578 “interferes with local law enforcement’s ability to work with other agencies”).

234. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 1 (Apr. 18, 2017).

claimed that “local authorities often work with federal agencies on investigations that may uncover both state and federal violations, such as money laundering, diverting marijuana out of state for sales, and environmental damage from outdoor pot farms.”²³⁵ In these situations, it is in the best interest of both federal and state authorities if the illegal activities are shut down.²³⁶

Opponents believed AB 1578 would put state and local authorities at a disadvantage because they could not assist federal authorities without a court order, leading to more inefficiency in law enforcement.²³⁷ In addition, some opponents claimed “local law enforcement would be put in ‘harm’s way’ if there was no cooperation with federal drug enforcement officers.”²³⁸ However, opponents of AB 1578 might have overstated their fears.²³⁹ While AB 1578 would have prevented state cooperation with federal authorities without a court order for enumerated actions, cooperation would still have been possible if the federal agency received a court order signed by a judge.²⁴⁰ AB 1578 was not meant to prevent cooperation in all situations and the author “said he was open to revising the bill language to make it clear he wanted to allow cooperation between locals and federal agents in cases where state and federal marijuana laws were being violated.”²⁴¹

Courts have not yet addressed AB 1578’s issues and it is therefore unclear how courts would approach it in the future.²⁴² AB 1578’s strict language would have made cooperation between state and federal authorities more difficult, but the exact degree of difficulty would have depended on how courts handled requests by federal agencies.²⁴³ Ultimately, these concerns might have been

235. See *Other Voices: ‘Sanctuary state’ Rules For Pot Unwise*, DESERT SUN (May 19, 2017, 1:04 PM PT), <http://www.desertsun.com/story/opinion/editorials/2017/05/19/other-voices-la-times-sanctuary-state-rules-pot-unwise/333460001/> (on file with *The University of the Pacific Law Review*).

236. See *id.* (noting that investigations “may uncover both state and federal violations”).

237. See *id.* (noting that AB 1578 prevents types of cooperation that would have been allowed previously); see also *The Role of State & Local Enforcement in Immigration Matters and Reasons to Resist Sanctuary Policies*, FED’N FOR AMERICAN IMMIGR. REFORM (Jan. 2016), <http://www.fairus.org/issue/the-role-of-state-local-law-enforcement-in-immigration-matters> (on file with *The University of the Pacific Law Review*) (describing how laws that prevent cooperation lead to wasting of taxpayer resources).

238. Patrick McGreevy, *California Could Be a ‘Sanctuary State’ From Federal Pot Laws, Thanks to Razor-Thin Vote*, L.A. TIMES (June 1 2017, 9:20 PM), <http://www.latimes.com/politics/la-pol-ca-marijuana-enforcement-bill-20170601-story.html> (on file with *The University of the Pacific Law Review*).

239. *Id.*

240. See *id.* (explaining how AB 1578’s author wanted to clarify that cooperation would still be possible).

241. *Id.*

242. See *No Sanctuary For Marijuana in California*, L.A. TIMES (May 16, 2017, 4:00AM), <http://www.latimes.com/opinion/editorials/la-ed-marijuana-sanctuary-20170516-story.html> (on file with *The University of the Pacific Law Review*) (explaining that Colorado and Washington previously introduced similar bills, but failed to implement them, meaning that California’s would be the first).

243. See *id.* (noting that Colorado and Washington failed to implement their bills, thus no case law has developed yet).

overshadowed by the fact that the purpose of AB 1578 was to reinforce the will of California voters.²⁴⁴

3. *Would AB 1578 Have Presented Preemption Issues?*

When states previously considered refusing to cooperate with the Environmental Protection Agency (EPA) on a plan to control greenhouse gas emissions, there were concerns that this would undermine the rule of law, and send the message that states could choose not to implement federal policies they disagreed with.²⁴⁵ Had AB 1578 been promulgated, and had California essentially been granted the legal right to refuse to cooperate with federal marijuana policy, other states and local governments might have followed suit.²⁴⁶ This has already started to occur, as Illinois, Maryland, Nevada, and New York have followed California's lead and introduced bills to restrict cooperation with federal immigration policies.²⁴⁷

According to the Supremacy Clause, federal law preempts state law when the laws conflict.²⁴⁸ Courts may find that laws conflict when the “state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”²⁴⁹ Since AB 1578 would have made cooperation between state and federal authorities more difficult, the argument could be made that it presents an obstacle conflict.²⁵⁰ The manner in which the Court would conclude on such an argument is not clear because “[o]bstacle preemption is a notoriously difficult test to apply.”²⁵¹ Since obstacle preemption “requires courts to look beyond statutory text to divine congressional purposes and to determine whether any number of distinct state laws might undermine those purposes” it is

244. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3–4 (Apr. 18, 2017).

245. See Jonathan H. Adler, *Yes, Gov. Whitman, States May Choose Which Federal Laws to Implement*, WASH. POST (Mar. 16, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/16/yes-gov-whitman-states-may-choose-which-federal-laws-to-implement/> (on file with *The University of the Pacific Law Review*).

246. See Mike Maharrey, *Federal Report: State Noncompliance is Nullification*, TENTH AMENDMENT CTR. (Nov. 11, 2016), <http://tenthamendmentcenter.com/2016/11/11/federal-report-state-noncompliance-is-nullification/> (on file with *The University of the Pacific Law Review*) (explaining how once California decided to legalize medicinal marijuana, it set off a “tsunami” of other states that followed).

247. See Jennifer Medina & Jess Bidgood, *California Moves to Become ‘Sanctuary State,’ and Others Look to Follow*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/us/sanctuary-states-immigration.html> (on file with *The University of the Pacific Law Review*).

248. Mikos, *supra* note 114, at 9.

249. *Id.* at 10.

250. See *id.* (noting that an obstacle conflict would arise if a policy stood as an obstacle to the objectives of Congress—curbing illicit drug use); see also ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 1 (Apr. 18, 2017) (noting that AB 1578 makes cooperation between state and federal authorities more difficult).

251. Mikos, *supra* note 114, at 25.

“[n]o wonder . . . that courts and lawmakers have struggled . . . to understand preemption in the context of state marijuana law reforms.”²⁵²

Even if AB 1578 was preempted by the CSA, the federal government might have had trouble effectively enforcing federal marijuana laws.²⁵³ They simply do not have the manpower to enforce the laws entirely by themselves.²⁵⁴ Indeed, that is the very reason they have historically relied on local law enforcement assistance.²⁵⁵ Although local law enforcement has traditionally assisted federal authorities in enforcing marijuana laws, local law enforcement was not obligated to do so.²⁵⁶ Indeed, the Tenth Amendment gives the states the powers not delegated to the federal government by the Constitution—such as the right to decide how to carry out enforcement of federal marijuana laws.²⁵⁷ And the Court has repeatedly reaffirmed the idea that “Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”²⁵⁸ Accordingly, AB 1578, arguably would have merely codified a right that already existed: the right of California (or any state, for that matter) to not be compelled to enforce federal laws.²⁵⁹ Moreover, the Trump administration remains free to enforce federal without California’s help.²⁶⁰ But without this help, effective enforcement would be extremely difficult absent a massive increase in federal manpower.²⁶¹

Alcohol prohibition was unsuccessful and was ultimately repealed due to the lack of state cooperation with the federal government.²⁶² Fox News senior judicial analyst Judge Andrew Napolitano has stated that a single state withdrawing all resources and participation in federal marijuana prohibition

252. *Id.* at 26.

253. *See* Pascual, *supra* note 166 (explaining how difficult and dangerous it can be for federal authorities to enforce federal marijuana law without help from state or local authorities); *see also* Aldin, *supra* note 90 (noting that federal enforcement of marijuana laws would require “tremendous” resources).

254. *Id.*

255. *Id.*

256. *See* *Printz v. United States*, 521 U.S. 898, 935 (1997) (noting that states cannot be required to enforce federal laws).

257. U.S. CONST. amend. X.

258. *See* *Printz*, 521 U.S. at 935.

259. *See id.* (noting that the federal government is not able to commandeer the states’ officers because it would violate the Tenth Amendment).

260. *See* Pascual, *supra* note 166 (explaining how difficult and dangerous it can be for federal authorities to enforce federal marijuana law without help from state or local authorities).

261. *See id.* (explaining how difficult and dangerous it can be for federal authorities to enforce federal marijuana law without help from state or local authorities); *see also* Aldin, *supra* note 90 (noting that federal enforcement of marijuana laws would require “tremendous” resources).

262. *See* *The Repeal of Prohibition*, PROHIBITION: AN INTERACTIVE HIST., <http://prohibition.themuseum.org/the-history/the-end-of-prohibition/repeal-of-prohibition/> (last visited Oct. 6, 2017) (on file with *The University of the Pacific Law Review*) (explaining how lack of state enforcement played a large role in the failure of prohibition).

could effectively end it.²⁶³ Currently, marijuana prohibition arguably parallels alcohol prohibition in this respect.²⁶⁴

Cooperation proved to be crucial for effectiveness during prohibition of alcohol.²⁶⁵ Similarly, if the federal government can't get states to cooperate on marijuana enforcement, the regulation it may go the way of the 18th amendment.²⁶⁶ Eight years after the prohibition of alcohol, 28 states completely ceased all funding for the enforcement of prohibition;²⁶⁷ as of 2017, 29 states allow for medical marijuana use, and eight allow for recreational use.²⁶⁸ In 1926, 81% of people who participated in a poll conducted by the Newspaper Enterprise Association favored modifying or repealing the Eighteenth Amendment;²⁶⁹ in 2017, 60% of Americans who participated in a poll conducted by Quinnipiac University supported legalizing marijuana, and 94% approved of its medical use if prescribed by a doctor.²⁷⁰ After years of ineffective enforcement, Congress repealed the Eighteenth Amendment, and brought an end to Prohibition.²⁷¹ Similarly, AB 1578 and similar laws in other states, which lead to ineffective enforcement by the federal government, might have very well resulted in the repeal of federal marijuana laws.²⁷²

AB 1578 would have prevented state cooperation with federal authorities, and if California was successful in implementing AB 1578, other states might have followed suit.²⁷³ Colorado and Washington previously introduced similar bills, but failed to implement them for fear of the resulting complications, and sparking federal intervention.²⁷⁴ Without aid from state or local authorities, effective enforcement would be extremely difficult.²⁷⁵ Additionally, if the

263. Boldin, *supra* note 15.

264. *See The Repeal of Prohibition, supra* note 262 (explaining how lack of state enforcement played a large role in the failure of prohibition).

265. *See The Repeal of Prohibition, supra* note 262.

266. *See id.* (noting how the lack of state involvement in enforcement of prohibition led to its demise); *see also* Boldin, *supra* note 15 (noting that states could end federal prohibition of marijuana by withdrawing resources).

267. Michael Boldin, *Dec. 5 1933: Prohibition Repealed After State Resistance Killed the Law*, TENTH AMENDMENT CTR. (Dec. 5, 2013), <http://blog.tenthamendmentcenter.com/2013/12/dec-5-1933-prohibition-repealed-after-state-resistance-killed-the-law/> (on file with *The University of the Pacific Law Review*).

268. *See* Jennifer Calfas, *More Americans Than Ever Want Marijuana Legalized*, FORTUNE (Apr. 20, 2017), <http://fortune.com/2017/04/20/legalize-marijuana-united-states-quinnipiac-poll/> (on file with *The University of the Pacific Law Review*).

269. *The Repeal of Prohibition, supra* note 262.

270. Calfas, *supra* note 268.

271. *The Repeal of Prohibition, supra* note 262.

272. *See* Boldin, *supra* note 15 (noting that if states withdrew all resources and participation in federal prohibition of marijuana, they could end it).

273. *No Sanctuary For Marijuana in California, supra* note 242.

274. *Id.*

275. *See* Pascual, *supra* note 166 (explaining how difficult and dangerous it can be for federal authorities to enforce federal marijuana law without help from state or local authorities); *see also* Aldin, *supra* note 90

number of states refusing to cooperate with federal marijuana laws increases, the federal government's already limited resources would be stretched even thinner.²⁷⁶ Thus, AB 1578 might have encouraged other states to enact similar anti-cooperation laws, which would have led to diminishing effectiveness of any attempted federal intervention.²⁷⁷ Further, AB 1578 might have signaled the beginning of the end for prohibition of marijuana, but it would have depended on how many states enacted similar bills²⁷⁸ and how many resources the federal government expended to enforce those laws.²⁷⁹

4. *Would AB 1578 Have Resulted in Federal Intervention for Violating the Cole Memo?*

The Cole Memo, issued by Deputy Attorney James Cole, is another Obama-administration policy that is still in place.²⁸⁰ The 2013 Cole Memo directed federal authorities not to target individuals in states that had adopted strong and effective regulatory and enforcement systems to control marijuana.²⁸¹ This relaxed standard however was contingent upon "open communication between the state and federal government to assure that the state is in compliance with the federal priorities."²⁸² Since AB 1578 would have prevented state or local authorities from communicating with federal officials without a court order, opponents predicted that it would bring California into direct violation of the Cole Memo.²⁸³

If California's policies were deemed to violate the Cole Memo, the federal government might have been forced to intervene.²⁸⁴ Numerous other groups who were weary of antagonizing the Trump administration echoed this fear.²⁸⁵ For example, if federal authorities discovered that marijuana from California was

(noting that federal enforcement of marijuana laws would require "tremendous" resources).

276. See Weigant, *supra* note 123 (explaining that if other states enacted similar anti-cooperation laws, the federal government would need a lot more resources).

277. *Id.*

278. *Id.*; see also Maharrey, *supra* note 246 (explaining how once California decided to legalize medicinal marijuana, it set off a "tsunami" that the federal government has since been unable to stop).

279. See Aldin, *supra* note 90 (noting that federal enforcement of marijuana laws would require "tremendous" resources, so while it could do so, it wouldn't be easy).

280. Memorandum from James M. Cole, *supra* note 85.

281. *Id.*

282. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 7 (Apr. 18, 2017).

283. *Id.*

284. *Id.*; see also Katy Murphy, *Bill to Shield Recreational Marijuana From Federal Crackdowns Clears First Hearing*, SANTA CRUZ SENTINEL (Apr. 18, 2017, 7:10PM), <http://www.santacruzsentinel.com/article/NE/20170418/NEWS/170419669> (on file with *The University of the Pacific Law Review*) (describing how AB 1578 is "poking the bear" and might be pushing the federal government to intervene).

285. *Other Voices: 'Sanctuary State' Rules For Pot Unwise*, *supra* note 235.

being illegally sold in another state, they would be prevented from receiving assistance or information from state or local authorities without a court order signed by a judge.²⁸⁶ In theory, this could have brought California in direct violation of the Cole Memo, sparking the kind of federal intervention that AB 1578 was meant to prevent in the first place.²⁸⁷ However, as noted previously, federal intervention without the aid of state or local authorities would be a nearly impossible task for the federal government.²⁸⁸ Thus, AB 1578 might have violated the Cole Memo and encouraged the federal government to intervene, but given the unlikelihood of an effective intervention, the possibility may have been a risk worth taking.²⁸⁹

V. CONCLUSION

AB 1578 would have protected state-law-abiding individuals involved in California's marijuana industry from federal intervention by ensuring that protections provided by the Obama-era policies remained in effect.²⁹⁰ As long as the federal government did not intervene, the will of California's voters would continue to control,²⁹¹ and the state would remain on track to reach \$7.6 billion in direct sales to consumers by the year 2020.²⁹² In addition, marijuana related investments would continue to grow, which in turn, would have helped to expand the marijuana job market and its tax revenue.²⁹³ Finally, the trend of decreasing deaths from opioid overdoses would have continued.²⁹⁴

While some of AB 1578's effects on public safety were still too uncertain to make any definite predictions, it was not too speculative to suggest that the continued operation of the marijuana industry would not have increased violent crime rates.²⁹⁵ AB 1578 might have encouraged other states to enact similar anti-

286. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 6 (Apr. 18, 2017).

287. *Id.*; Murphy, *supra* note 284.

288. *See supra* Part IV.B.3 (noting that "states handled nearly ninety-nine percent of all marijuana related arrests").

289. *See* Murphy, *supra* note 284 (explaining how AB 1578 wouldn't prevent federal intervention, it would just make it very legally and politically costly).

290. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 3-4 (Apr. 18, 2017) (explaining how AB 1578 aims to continue protections provided under the Obama-administration to the state-law complaint users).

291. *See id.* (explaining how federal enforcement of marijuana laws using California's resources would undermine the will of California's voters).

292. Smith, *supra* note 109.

293. *See* Williams, *supra* note 113 (explaining how AB 1578 could provide some protection for marijuana investors, easing their fears).

294. *See* Ingraham, *supra* note 53 (explaining how there is trend of decreasing death from opioids as access to legal marijuana continues, but this could be reversed if access were cut off).

295. *See No Correlation Between Medical Marijuana Legalization, Crime Increase*, *supra* note 61

2018 / *Interaction Between State and Federal Law Enforcement*

cooperation bills,²⁹⁶ and might have encouraged a federal intervention for violating the 2013 Cole Memo.²⁹⁷ But, even if the intervention were limited to California, it would have been difficult for the federal government to do so effectively.²⁹⁸ Further, the effectiveness would have been further diminished if more states enacted similar laws.²⁹⁹ California has been a leader in the legal marijuana movement since passing Proposition 215,³⁰⁰ and if it was successful in implementing AB 1578, other states might have mustered the courage to do so as well.³⁰¹ Ultimately, President Trump will decide how the federal government will handle enforcement of marijuana laws over the coming years, but AB 1578 would have forced him to rely solely on federal resources, which might have made it practically impossible to enforce federal marijuana laws effectively if he decided to intervene.³⁰²

(explaining that medical marijuana legalization is not an indicator of increased crime, but may actually be related to reductions in crime).

296. See Maharrey, *supra* note 246 (explaining how once California decided to legalize medicinal marijuana, it set off a “tsunami” that the federal government has since been unable to stop).

297. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1578, at 6 (Apr. 18, 2017).

298. See Mikos, *supra* note 114, at 17 (noting that “states handled nearly ninety-nine percent of all marijuana related arrests” so each additional state that refuses to cooperate would increase resource requirements immensely).

299. *Id.*

300. See Katy Steinmetz, *What to Know About Marijuana Legalization in California*, TIME (Nov. 9, 2016), <http://time.com/4565438/california-marijuana-faq-rules-prop-64/> (noting that California was the first state to legalize medical marijuana).

301. See *No Sanctuary For Marijuana in California*, *supra* note 242 (explaining how Colorado and Washington didn’t implement their bills because of the legal uncertainty).

302. See *supra* Part IV.B.3 (noting that AB 1578 makes cooperation—which is necessary for effective enforcement—more difficult).