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Economic Recovery Through Interstate Cannabis Commerce

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ABSTRACT

America is currently experiencing an economic recession plagued with high unemployment and low economic output. The Alliance for Sensible Markets and other proponents of cannabis legalization think that the cannabis industry can be extremely helpful in recovery through an interstate cannabis commerce plan. This plan could potentially pump in immediate waves of investment and create thousands of jobs. The plan lays out two steps: (1) have at least two states enter into an interstate compact for cannabis and (2) obtain congressional approval for the interstate compact. This article will look at the trends of a few states; speak about the benefits of the plan; touch on the consequences; and talk about the chances of this plan working, especially with the 2020 election approaching. Additionally, the article will tackle questions that face the plan if those two steps are met, such as questions on banking laws, tax laws, and whether psychoactive cannabis will be regulated as a commodity crop or if states will maintain their own existing regulatory framework.

I. THE ORGANIZATION BEHIND THE PLAN

First At this moment, federal law prohibits cannabis to be transported across state lines.¹ The Alliance for Sensible Markets set forth a plan to legalize interstate cannabis commerce by 2021.² The group's goal is to simply "get the economics right."³ The organization is a non-profit coalition made up of a number of business and advocacy groups and individuals who share in a common mission: creating a "thriving, just, and sustainable legal cannabis industry."⁴ The coalition's campaign requires two steps to be met. First, they must have at least two governors from states where cannabis is legal, or soon-to-be legal, enter into an interstate compact in order to regulate the commerce exchange between them.⁵ Second, they must obtain congressional approval for this interstate compact, hopefully by early 2021.⁶

II. STEP ONE OF THE PLAN

The first part of the coalition's plan is to have the governors from at least two states with legalization, or soon-to-be legalization, enter into an interstate compact with one another.⁷ This looks to be the easiest step to complete, as governors nationwide (for the most part) are seen as allies.⁸ For example, during the early stages of COVID-19, governors from thirty-three states classified medical marijuana businesses as essential in their stay-at-home orders.⁹ The case for the first step being met is seen as even more hopeful if we look to some of the governors in the Northeast. New York State Governor Andrew Cuomo hosted Governors Wolf (Pennsylvania), Murphy (New

¹ Kyle Jaeger, *New Marijuana Coalition Unveils Plan to Legalize Interstate Cannabis Commerce*, MARIJUANA MOMENT (Sept. 21, 2020), <https://www.marijuanamoment.net/new-marijuana-coalition-unveils-plan-to-legalize-interstate-cannabis-commerce/> [hereinafter Jaeger, *New Marijuana Coalition*].

² *About*, SENSIBLE MARKETS, <https://www.sensiblemarkets.org/about-the-alliance-for-sensible-markets> (last visited Sept. 27, 2020) [hereinafter *About*].

³ *The Strategy*, SENSIBLE MARKETS, <https://www.sensiblemarkets.org/about-the-alliance-for-sensible-markets> (last visited Sept. 27, 2020) [hereinafter *Strategy*].

⁴ *About*, *supra* note 2.

⁵ *Strategy*, *supra* note 3.

⁶ *Id.*

⁷ Jelena Cikes, *New Campaign Makes Push for Interstate Cannabis Commerce in U.S.*, GREENCAMP (Sept. 22, 2020), <https://greencamp.com/new-campaign-makes-push-for-interstate-cannabis-commerce-in-u-s/>.

⁸ See *Strategy*, *supra* note 3.

⁹ John Schroyer, *US Markets That Have Allowed Marijuana Businesses to Remain Open During Coronavirus Pandemic Stay-At-Home Orders*, MARIJUANA BUSINESS DAILY (Apr. 2, 2020), <https://mjbizdaily.com/states-that-have-allowed-marijuana-businesses-to-remain-open-during-coronavirus-pandemic/>.

Jersey), and Lamont (Connecticut) for the Regional Cannabis Regulation and Vaping Summit.¹⁰ At that point none of these states had fully legalized cannabis, but all governors support legalization for adult recreational use and look forward to state legalization within the near future (New Jersey just recently legalized it in November 2020). At the Summit, they talked about public health, law enforcement concerns, tax-structure, restrictions on advertising, safety best practices, banking issues with respect to the cannabis industry, and a need for proper market regulation.¹¹ The main take-away: they were all there to coordinate their cannabis regulation policies, and more importantly, they were discussing the regulation together for the sake of being on the same page. This can be viewed as similar to what an interstate compact's goal is.

According to the Library of Congress, “[a]n interstate compact is an agreement between two or more states of the United States that is approved by those states’ respective legislatures, and . . . consented to by the US Congress.”¹² A commonly referenced interstate compact example is the Port Authority which was created to “regulate regional transportation and infrastructure in New York and New Jersey.”¹³ They are used as a tool for uniform regulation across two or more states. These state compacts are recognized in Article I, Section 10, Clause 3 of the United States Constitution and specifically say they require the consent of Congress.¹⁴ In *Com. of Va. v. State of Tenn.*, the Supreme Court decided that the consent from Congress could come after the creation of an interstate compact “where the agreement relates to a matter which could not well be considered until its nature is fully developed” and that the consent can be implied.¹⁵ If the federal government passes legislation or puts out a memo implying that they will not interfere after states have entered into an interstate compact, this would make the compact effective. It would be useful to “set out the broad regulatory parameters of interstate commerce in cannabis, particularly as they concern public safety, meaning testing, tracking, and labeling.”¹⁶ Due to the benefits of importing and exporting cannabis between states (see Part IV below), governors from at least two states, and their respective legislatures, would most likely be willing to enter into interstate compacts.

III. STEP TWO OF THE PLAN

As mentioned, the second part of the coalition’s plan is to have Congress approve of the interstate compact in 2021.¹⁷ They could approve of this by either a “stand-alone bill or as an amendment or rider to larger legislation.”¹⁸ The founder and president of the Alliance for Sensible Markets, Adam Smith, is confident that they will receive congressional approval in 2021 if multiple states can get behind this plan and the media generates sufficient coverage of the issue.¹⁹ He believes that due to the economic benefits that will come with this plan, it will gain bipartisan support in Congress.²⁰ Another option for the federal stance to change and for this plan to perhaps work without legislation, is something similar to the now-rescinded Cole Memorandum from the Department of Justice. The memo could implement an administrative policy to allow for the interstate cannabis commerce for states who have legalized it and agreed to each other’s terms in an interstate compact.²¹ This

¹⁰ Sam Wood, *Key Northeastern Governors Join Forces to Chart a Path to Legalizing Marijuana*, PHILA. INQUIRER (Oct. 18, 2019), <https://www.inquirer.com/business/weed/marijuana-cannabis-legalization-governors-wolf-murphy-cuomo-20191018.html>.

¹¹ *Id.*

¹² *Interstate Compacts: United States*, LIBRARY OF CONGRESS (July 24, 2020), <https://www.loc.gov/law/help/interstate-compacts/us.php>.

¹³ Jaeger, *New Marijuana Coalition*, *supra* note 1.

¹⁴ U.S. CONST. art. I, § 10, cl.3.

¹⁵ *Com. of Va. v. State of Tenn.*, 148 U.S. 503, 521 (1893).

¹⁶ *Strategy*, *supra* note 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Jaeger, *New Marijuana Coalition*, *supra* note 1.

²¹ Andrew Selsky, *Oregon Preparing for Possible Interstate Pot Commerce*, AP NEWS (June 11, 2019), <https://apnews.com/article/d760929944034e72a294086bf393640f>.

seems less likely to happen than part one of the plan, but there is still a good chance based on the benefits to the participating states, the economy, and the country as a whole (see Part IV below).

A. Achieving Success of Step Two Through Congress

Besides overwhelming support for same sex marriage, no other issue seems to have garnered as much support in recent years as the legalization of cannabis for medicinal and recreational/adult use purposes.²² After all the years that the federal government attempted to demonize cannabis,²³ this shift in the public perception is quite remarkable. This cultural shift has an effect on congressional actions. There have been several bills introduced in the U.S. House of Representatives and U.S. Senate recently in regard to reform in this area. These include the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, sponsored by Representative Jerry Nadler and former Senator Kamala Harris; the SAFE Banking Act, sponsored by Representative Ed Perlmutter and Senator Jeff Merkley; the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, sponsored by Senator Elizabeth Warren and Representative Earl Blumenauer; the Regulate Marijuana Like Alcohol Act, sponsored by Representative Earl Blumenauer; and a few other pieces of legislation.²⁴ In other words, Congress seems to be moving in the right direction for potential legislation in the future to meet the requirement of step two.

A promising reform in Congress was the passage of the Rohrabacher-Farr amendment to the omnibus spending bill in 2014 (which must be renewed each year).²⁵ It “blocks the Justice Department from using federal funds to impede the implementation of state medical marijuana laws.”²⁶ While the amendment does not extend to recreational cannabis, it can be looked at in a positive light in terms of the Alliance’s plan. Instead of a full-length legislation, something like this amendment could get through on an omnibus bill which states that no federal funds should be used to impede the implementation of an interstate compact between two compliant states for the purpose of interstate cannabis commerce.

B. Achieving Success of Step Two Through Executive Action

With the direction of President Biden, guidance can be given in an executive memo to meet the requirements of step two. The Department of Justice (through the Attorney General or relevant local US Attorney) could issue a memo saying entities that engage in interstate cannabis commerce, between two legal states that have agreed through an interstate compact, will not be federally prosecuted for acting on the compact. This is similar to the Cole Memo which “laid out the parameters for the federal government staying out of the states’ cannabis experiments. Among other things, the Cole memo stated that the DEA could crackdown on cannabis moving from states with well-regulated systems to states that do not allow cannabis.”²⁷ Instead of cracking down on cannabis moving between states, the new potential memo would allow it under certain conditions. Even looking at the original text of the Cole Memo saying a priority of law enforcement was “[p]reventing the diversion of marijuana

²² See Ilya Shapiro, *The Case for Allowing Interstate Trade Among Marijuana-Legal States*, CATO INST. (Mar. 13, 2019), <https://www.cato.org/publications/commentary/case-allowing-interstate-trade-among-marijuana-legal-states>.

²³ Scott C. Martin, *A Brief History of Marijuana Law in America*, TIME, Apr. 20, 2016, <https://time.com/4298038/marijuana-history-in-america> (“The Baby Boom generation realized, through personal experience or social observation, that marijuana was not the Demon Weed, as the federal government claimed, particularly in light of credible reports that it provided relief for a variety of ailments and symptoms”).

²⁴ MARIJUANA POLICY PROJECT, *House Passes Federal Marijuana Decriminalization Bill!*, (Dec. 8, 2020), <https://www.mpp.org/policy/federal/>.

²⁵ THOMPSON COBURN LLP, *AG’s Latest Remarks Signal No Outright Campaign Against Cannabis Yet*, (Mar. 20, 2017), <https://www.thompsoncoburn.com/insights/blogs/tracking-cannabis/post/2017-03-20/ag’s-latest-remarks-signal-no-outright-campaign-against-cannabis-yet>.

²⁶ Laura Jarrett, *Sessions Nixes Obama-era Rules Leaving States Alone that Legalize Pot*, CNN, (Jan. 4, 2018), <https://www.cnn.com/2018/01/04/politics/jeff-sessions-cole-memo/index.html>.

²⁷ Bethany Moore, *Committee Blog: Ending The Ban On Interstate Commerce (Part 1)*, NCIA (JAN. 15, 2020), <https://thecannabisindustry.org/committee-blog-ending-the-ban-on-interstate-commerce/>.

from states where it is legal under state law in some form to other states”²⁸—this statement could be argued to mean diversion of marijuana from states where it is legal to states where it is *illegal*. Therefore, under the Cole Memo, interstate commerce between two states that have legalized cannabis would not be a priority of the federal government law enforcement and would be tolerated. This might be a stretch of the words, but could be argued. The Cole Memo later lost a lot of its steam under Attorney General Jeff Sessions who rolled back the laissez-faire approach to cannabis and said that the prosecution decisions rested with the federal prosecutors across the country.²⁹ Proponents of this plan should remain hopeful that the new administration will come out with an executive memo of their own allowing for interstate compacts related to cannabis.

IV. HOW WOULD THIS PLAN BENEFIT THE ECONOMY?

The benefits to allowing interstate cannabis commerce might be reason enough for governors to enter into interstate compacts and also for Congress to approve these agreements through legislation. Interstate cannabis commerce would allow the cannabis industry to fully thrive and benefit other segments of the economy. It would allow companies in one state with a large supply to sell the product to companies in different states, which would make for an efficient industry all around. Enabling the import and export of cannabis across state lines could potentially create a booming private industry, help states out of the recent recession, create jobs, build new businesses on platforms of social equity, bring supply and demand to an equilibrium for stabilization of prices, and create a framework for when cannabis inevitably becomes federally legal.

A. Private Industry That Has Not Yet Met Its Full Potential

America is currently experiencing an economic recession plagued with high unemployment and low economic output.³⁰ Proponents of an interstate commerce plan (or legalization in general) think that the cannabis industry can be extremely helpful in recovery.³¹ Due to the economic downturn, proponents think this plan simply cannot wait. They see this plan spurring immediate waves of investment which will create tens of thousands of jobs; empower businesses at all points of commerce; stabilize supply and demand; promote equity across legalizing states; help thousands of farms and businesses; and stimulate the economy right now.³² The coalition states, “There is perhaps no other industry in the US private sector that is poised to unleash so much economic activity, so broadly distributed, as legal cannabis. We just need to get the economics right.”³³ Cannabis businesses were deemed essential in some states, and the sales seemed to have remained steady for the most part.³⁴ This trend may indicate that the industry is safe during times of economic downturn. The governors of states and Congress both want our country to bounce back from this recession. They might be willing to listen now.

²⁸ Lisa Rough, *The Cole Memo: What Is It and What Does It Mean?*, LEAFLY (Sept. 14, 2017), <https://www.leafly.com/news/politics/what-is-the-cole-memo>.

²⁹ Jarrett, *supra* note 26.

³⁰ Scott Horsley, *It's Official: U.S. Economy Is in a Recession*, NPR (June 8, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/06/08/872336272/its-official-scorekeepers-say-u-s-economy-is-in-a-recession#:~:text=It's%20Official%3A%20U.S.%20Economy%20is%20in%20a%20Recession,-Facebook&text=Regional%20Food%20Bank,-The%20country%20has%20officially%20entered%20a%20recession%20amid%20the%20pandemic.of%20Economic%20Research%20said%20Monday.&text=It%20may%20seem%20obvious%2C%20with,unemployment%20and%20plunging%20economic%20output>.

³¹ *Strategy*, *supra* note 3.

³² SENSIBLE MARKETS, <https://www.sensiblemarkets.org/> (last visited Sept. 26, 2020) [hereinafter SENSIBLE MARKETS].

³³ *Strategy*, *supra* note 3.

³⁴ Alicia Wallace, *Why More States Could Legalize Cannabis in 2021*, CNN (June 25, 2020), <https://www.cnn.com/2020/06/24/business/cannabis-legalize-2021-recession/index.html>.

B. The Industry Viewed in Light of Social Equity

Another benefit to the cannabis industry upon implementing this plan is the idea of making the industry more diverse and equitable. If the interstate compacts were to bind states together on some social equity efforts, it could create a diverse landscape with “social justice and empowerment initiatives.”³⁵ States that are getting ready to legalize could put “qualified equity applicants first in line” to be licensed for business.³⁶ Interstate commerce would allow these qualified applicants to get their businesses off the ground almost immediately using imported product from supply states like Oregon and California. The founder of the Minority Cannabis Business Association, Jason Ortiz said, “Interstate commerce opens pathways to success and economic opportunity for thousands of smaller businesses, setting the framework for a more diverse and equitable industry.”³⁷ This would allow smaller businesses to have a fighting chance against the large, established companies in the industry.

C. The Plan Could Bring Supply and Demand to Equilibrium

Another benefit to the industry is that it could potentially fix the supply and demand problem. States like California and Oregon on the West Coast have great conditions for cultivating cannabis.³⁸ Therefore, they produce a lot of it. So much, in fact, that Oregon currently has a six-year surplus of cannabis.³⁹ An oversupply is not ideal for these suppliers as it drives prices down. There are only so many consumers in the states which they are limited to sell within. This issue is a major reason for the interstate cannabis commerce plan created by the Alliance for Sensible Markets. On the flip side, states in the Northeast have limited production capabilities due to the climate and are left to resort to indoor cultivation facilities.⁴⁰ These facilities are often large and expensive.⁴¹ For this reason, when states like New York and Pennsylvania do become fully legal, it might be tough for them to jumpstart their businesses off the bat. New York and Pennsylvania are both very populous states (according to the United States Census 2019 estimated population data: the fourth and fifth most populous, respectively).⁴² They simply would not have the supply necessary to meet the high demand. If this interstate commerce plan were to go into effect, high volume producer states like California and Oregon could export some of their oversupply to consumer states (or soon-to-be consumer states in the case of New York and Pennsylvania) where they have a large demand but lack a sufficient supply stream.⁴³ “If New York, the 4th most populous state in the union, legalized adult-use (which seems likely in the near future), and interstate trade were still banned, it would require a massive investment, on the order of billions of dollars, to create enough indoor and greenhouse grow facilities to supply the demand created by its 19 million inhabitants.”⁴⁴ Allowing for interstate cannabis commerce would solve the problem by making for an efficient market.

D. This Plan Would Allow Our Country to Create a Framework for Future Federal Regulation

As of December 15, 2020, fifteen states have fully legalized cannabis (medicinally and for adult recreational

³⁵ Wood, *supra* note 10.

³⁶ Jason Ortiz and Adam Smith, *Interstate Cannabis Commerce Is a Path to Prosperity*, HARTFORD COURANT (Feb. 13, 2020), <https://www.courant.com/opinion/op-ed/hc-op-ortiz-smith-cannabis-0214-20200213-hq4xeov2ergyvoedohr4gtwmse-story.html>.

³⁷ Jaeger, *New Marijuana Coalition*, *supra* note 1.

³⁸ Cikes, *supra* note 7.

³⁹ David Bienenstock, *COVID-19 Interstate Compacts Could Be a Model for Regional Marijuana Trade*, LEAFLY (May 27, 2020), <https://www.leafly.com/news/politics/covid-19-interstate-compacts-could-be-a-model-for-regional-marijuana-trade>.

⁴⁰ Cikes, *supra* note 7.

⁴¹ *Id.*

⁴² *State Population Totals and Components of Change: 2010-2019*, U.S. CENSUS BUREAU (Dec. 30, 2019), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html>.

⁴³ Jaeger, *New Marijuana Coalition*, *supra* note 1.

⁴⁴ Moore, *supra* note 27.

use).⁴⁵ As more and more states change their legal status in regard to cannabis, it seems more likely that federal law will also change in time. Oregon’s Governor Brown says that federal law changing is “a matter of ‘when’ and not ‘if.’”⁴⁶

If federal law were to change in regards to the legalization of cannabis, it would be useful for federal governmental agencies to have a framework of regulation between states on which they could base federal guidelines. The interstate compacts would be a great tool to “[p]repare for full legalization by developing a regulatory framework based on sound economic principles and common sense.”⁴⁷ These compacts would touch on issues affecting multiple states such as public safety, testing, tracking, labeling, advertising, transporting, and pricing restrictions.⁴⁸ If there was one or more interstate compacts that seemed to effectively regulate commerce, the federal government could perhaps use the framework as a baseline legal structure.

In *New State Ice Co. v. Liebmann*, U.S. Supreme Court Justice Louis Brandeis called the independent states which make up the federal system “laboratories of democracy.”⁴⁹ By this he meant the states can implement and govern new policy for themselves without risking harm to the country as a whole.⁵⁰ Therefore, if a policy turns out to be harmful, other states and the federal government will not follow, but on the flip side, if a policy turns out to be a great idea—they follow. An example can be seen in Massachusetts around 2006 under Governor Mitt Romney. The state implemented a healthcare reform law to give everyone in the state healthcare (commonly referred to as “Romney-care”).⁵¹ This set the stage for the Affordable Care Act under President Obama on the national level (commonly referred to as “Obamacare”).⁵² Here, the Commonwealth of Massachusetts was a “laboratory of democracy”, implementing and executing a policy which served as a base for the 2010 federal government policy. An interstate compact between two states could serve as the “laboratory” before the federal government fully legalizes cannabis in this country.

V. WOULD THIS BENEFIT EVERYONE IN THE INDUSTRY?

Although there are many benefits to allowing interstate commerce of cannabis, not everyone in the industry will be on board. For example, as of January 25, 2019 there were 15 adult recreational use producers licensed in Maryland and 16 in Massachusetts.⁵³ Compare those two numbers with 1,114 producers licensed in Oregon.⁵⁴ These producers in Maryland and Massachusetts spent millions of dollars on indoor cannabis cultivation facilities, had very little competition, and because of this can keep their prices high. Why would they want a state like Oregon, with an oversupply of cannabis and cheaper production costs, to be allowed to flood into their market and hijack their customers and retailers? These customers and retailers want what is economically best for them. With the exception of a few, basic microeconomics will tell us that they will mostly flock to the product that is high

⁴⁵ *Map of Marijuana Legality by State*, DISA (July 2020), <https://disa.com/map-of-marijuana-legality-by-state>.

⁴⁶ Kyle Jaeger, *Oregon Governor Signs Bill to Allow Interstate Marijuana Imports and Exports*, MARIJUANA MOMENT (June 25, 2019), <https://www.marijuanamoment.net/oregon-governor-signs-bill-to-allow-interstate-marijuana-imports-and-exports/> [hereinafter Jaeger, *Oregon Governor*].

⁴⁷ SENSIBLE MARKETS, *supra* note 34.

⁴⁸ Jaeger, *New Marijuana Coalition*, *supra* note 1.

⁴⁹ *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932).

⁵⁰ *See id.*

⁵¹ Tom Keane, *An Experimental State*, BOSTON GLOBE (Jan. 7, 2014), <https://www.bostonglobe.com/opinion/2014/01/07/colorado-pot-experiment-testament-founding-fathers/pvUGE1H8IOYktyKzFL1xnL/story.html>.

⁵² Jessica Taylor, *Mitt Romney Finally Takes Credit For Obamacare*, NPR (Oct. 23, 2015), <https://www.npr.org/sections/itsallpolitics/2015/10/23/451200436/mitt-romney-finally-takes-credit-for-obamacare>.

⁵³ Ben Curren, *The State Cannabis Commerce Act Would Create An Import-Export Market From Sea To Shining Sea*, FORBES (Aug. 21, 2019), <https://www.forbes.com/sites/bencurren/2019/08/21/the-state-cannabis-commerce-act-would-create-an-import-export-market-from-sea-to-shining-sea/#4e95682725be>.

⁵⁴ *Id.*

quality at a cheaper price point. If you open up the cannabis industry across states through a congressionally approved interstate compact, you are allowing the larger companies with more money at their fingertips to potentially takeover small businesses in states all over the country.⁵⁵ Both of these issues, while valid, are no different than any other legal industry in this country, and may be beneficial to consumers based on competitive pricing. If this were to happen, businesses in states like New Jersey will be able to purchase cannabis products at a cheaper price from states like Oregon, in order to get their business off the ground and running quickly. This might “give those retailers a significant competitive advantage in terms of price, selection, and quality, while also helping to relieve over-production on the West Coast.”⁵⁶

VI. HAVE WE SEEN ANYTHING LIKE THIS PLAN BEFORE?

Quite recently we have seen something along the lines of this plan happening in Oregon. In 2019, the Oregon Governor Kate Brown signed a bill to allow for the import and export of cannabis with other states if federal law eventually allowed for it.⁵⁷ This gives Governor Brown permission to enter into agreements with other states where cannabis is legal, to create a lawful interstate commerce connection for cannabis (pending federal approval).⁵⁸ The bill does stipulate a couple other requirements surrounding interstate commerce. Governor Brown may only enter into agreements with states that have legalized cannabis and are accessible through the roadways, which leaves California, Nevada, and Washington. This is because the bill specifically prohibited imports and exports through air or sea.⁵⁹ Also, any import or export with another state would need to meet Oregon’s standards for packaging, labeling, and tracking.⁶⁰ California and Colorado were also expected to introduce similar interstate commerce bills in 2020, but COVID-19 seems to have put a hold on those plans.⁶¹

Shortly after Governor Brown signed it into effect, two federal lawmakers introduced a bill to allow for states to enter into agreements to import and export among each other. Representative Earl Blumenauer (D-OR) and Senator Ron Wyden (D-OR) introduced the State Cannabis Commerce Act in July of 2019 to “prevent Federal agencies [like the Justice Department] from interfering with the marijuana policy of States.”⁶² There has been almost no movement on this bill and using predictive analytics, Skopos Labs gives this bill a two percent chance of enactment.⁶³ If this bill were to be enacted, it would certainly allow for the coalition’s second step of its plan to be met with congressional approval. If this were to happen in conjunction with Oregon’s law as it currently is, Oregon would be able to enter into an agreement with California, Nevada, or Washington to import and export cannabis between the states without any federal governmental interference.

VII. THE COMMERCE CLAUSE

The Commerce Clause is found in Article 1, Section 8, Clause 3 of the United States Constitution.⁶⁴ It gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”⁶⁵ In 2005 the United States Supreme Court actually ruled specifically on Congress’s power to

⁵⁵ Bienenstock, *supra* note 39.

⁵⁶ *Id.*

⁵⁷ Jaeger, *Oregon Governor*, *supra* note 14.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Ortiz, *supra* note 36.

⁶² H. R. 3546, 116th Cong. (2019).

⁶³ *State Cannabis Commerce Act (H. R. 3546)*, GOVTRACK (last visited Sept. 26, 2020), <https://www.govtrack.us/congress/bills/116/hr3546>.

⁶⁴ U.S. CONST. art. 1, § 8, cl.3.

⁶⁵ *Id.*

regulate cannabis under their Commerce Clause powers in *Gonzales v. Raich*.⁶⁶ More specifically, “the Supreme Court ruled that a woman who grew marijuana plants on her property for her own medical use was participating in ‘interstate commerce.’”⁶⁷ This was due to the aggregate principle of interstate commerce—basically saying that while the woman who grew the marijuana herself probably was not affecting interstate commerce, if you took the aggregate effect of others doing this, it might. Under the aggregate principle, Congress’s power over interstate commerce extends even to “local” economic activities if those activities, taken in the aggregate, could rationally be expected to have a significant impact on interstate commerce.⁶⁸

The “Commerce Clause was intended to create a national free trade zone, not to allow the feds to create massive market inefficiencies, or even to prohibit interstate commerce.”⁶⁹ By not allowing for states to import and export cannabis amongst themselves, our market in this industry lags behind countries like Israel and Canada due to the inefficiencies within it.⁷⁰ If a company makes a cannabis “gummy” product in Oregon, they cannot export that item to the neighboring State of California. Instead, they need to strike up a deal with a manufacturer in California to produce the product and sell it there.⁷¹ But whether it can be justified or not, the Commerce Clause does give Congress the power to regulate interstate cannabis commerce, so step two of the plan is absolutely crucial.

Some have argued that the dormant commerce clause might help in the fight for allowing interstate cannabis commerce. The dormant commerce clause is a Supreme Court created doctrine that says Congress can invalidate any state or local law that it deems to place an undue burden on interstate commerce.⁷² Their argument is that if two states wanted to import/export cannabis with each other, but would have to travel through state X that does not permit any cannabis activity, state X would be in violation of the dormant commerce clause as they are placing an undue burden on interstate commerce.⁷³ The problem is glaring though—Congress itself has marijuana listed as Schedule 1 and not federally legal, so it is not really a problem that certain states might place an undue burden on commerce traveling through. Therefore, until the federal government allows for the movement of cannabis across state lines, this point is irrelevant. We do see this principle being used in regard to the regulation of hemp.

VIII. JUST LOOK AT HEMP

In 2018, Congress de-scheduled some cannabis products from the Controlled Substances Act for the first time with the Farm Bill.⁷⁴ This opened up many doors for hemp. “While hemp and marijuana products both are species of the cannabis plant, hemp is typically distinguished by its lower concentration of tetrahydrocannabinol (THC).”⁷⁵ Hemp is the same plant, but it just contains a concentration of no more than 0.3 percent of THC on a dry weight basis.⁷⁶ The bill established a new regulatory framework for hemp under the discretion of the US Department of

⁶⁶ *Gonzales v. Raich*, 545 U.S. 1 (2005).

⁶⁷ Allen St. Pierre, *Why Can't 'Cannabis' Be In The Commerce Clause?*, NORML (July 18, 2011), <https://norml.org/blog/2011/07/18/why-cant-cannabis-be-in-the-commerce-clause/>.

⁶⁸ See *Wickard v. Filburn*, 317 U.S. 111 (1942).

⁶⁹ Shapiro, *supra* note 22.

⁷⁰ *Id.*

⁷¹ See Dan Mitchell, *Interstate Commerce And Pot Don't Mix, But That May Change*, SAN JOSE INSIDE (Sept. 26, 2020), <https://www.sanjoseinside.com/news/interstate-commerce-and-pot-dont-mix-but-that-may-change/>.

⁷² See *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994).

⁷³ See Marc D. Hauser, *The Interstate Commerce Opportunity for Cannabis*, Reed Smith LLP (Aug. 19, 2020), <https://www.lexology.com/library/detail.aspx?q=40cbd2e2-6efc-4656-ac69-34862bd1e429>.

⁷⁴ NCSL, *State Industrial Hemp Statutes* (Apr. 16, 2020), <https://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx#:~:text=Thirty%2Deight%20states%20and%20Puerto,to%20industrial%20hemp%20in%202017.&text=At%20least%2015%20states%20enacted,West%20Virginia%2C%20Wisconsin%20and%20Wyoming>.

⁷⁵ *Id.*

⁷⁶ *Id.*

Agriculture (USDA).⁷⁷ The de-scheduling of hemp allowed for it to be transported across state lines and made it eligible under the federal crop insurance program.⁷⁸

While the bill puts the USDA in charge of overseeing this industry, it also allows for states to “submit a plan and apply for primary regulatory authority over the production of hemp in their state or in their tribal territory.”⁷⁹ This plan will need to be reviewed and approved by the USDA, so the states still regulate, but with oversight by the federal agency.

“The USDA will issue a final rule after the 2020 crop season. The rule reemphasizes an earlier USDA ruling that interstate transportation is legal, even if the shipment travels through a state that does not allow the growing of hemp.”⁸⁰ This is important, because as with marijuana, there are some states (South Dakota and Mississippi) that have not legalized the cultivation and sale of hemp.⁸¹ So, the USDA is saying that even if it is not legal in a state, *traveling* in that state with the product is legal for the purpose of interstate commerce between two legal states. This stance against interfering in interstate commerce has been cemented by the Supreme Court in *United States v. Matthew Mallory*.⁸²

The fact that hemp and marijuana are the same plant (just different levels of THC) brings up a potential problem for law enforcement and regulation. In a scenario where a truck filled with the plant is stopped in route between Oregon and New Jersey, how would an officer distinguish between marijuana and hemp? One would be prohibited from traveling in interstate commerce, and the other would be completely compliant based on the 2018 Farm Bill. So, allowing interstate cannabis commerce of all types would make the jobs of law enforcement easier and more operable.

IX. FUTURE QUESTIONS AND IMPLICATIONS IF THE PLAN WERE TO SUCCEED

If this plan succeeds in its goal, the benefits talked about in Part IV will hopefully come to fruition, but there will be some questions and issues that need to be addressed.

A. Banking and Investment

Right now, a big issue for businesses in the cannabis industry is lack of access to adequate and substantial funding. United States cannabis companies are not able to raise capital through equity offerings on the stock market.⁸³ This blocks off a huge investment outlet that publicly traded Canadian companies are able to enjoy.⁸⁴ Additionally, United States cannabis companies have a very tough time applying for and receiving loans. Because marijuana remains a Schedule I drug, federally insured banks are wary to lend out capital, leaving the companies with very limited funding options. These banks are reluctant to work with these state compliant marijuana businesses for two reasons. One, regulators disincentivize banks from working with the cannabis businesses

⁷⁷ Ian A. Stewart, *USDA Issues Legal Opinion Supporting Current Legality of Hemp in Interstate Commerce*, 10 NAT'L L. REV. 1,1 (2019).

⁷⁸ Kyle Jaeger, *USDA Says Hemp Farmers Now Qualify For Federal Crop Insurance*, MARIJUANA MOMENT (Aug. 27, 2019), <https://www.marijuanamoment.net/usda-says-hemp-farmers-now-qualify-for-federal-crop-insurance/>.

⁷⁹ NCSL, *supra* note 74.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Stewart, *supra* note 77.

⁸³ Lukas Southard, *Could the Success of Ballot Measures to Legalize Marijuana Add Pressure for Federal Legalization?*, MARKETPLACE (Nov. 16, 2020), <https://www.marketplace.org/2020/11/16/could-the-success-of-ballot-measures-to-legalize-marijuana-add-pressure-for-federal-legalization/>.

⁸⁴ *Id.*

through imposing additional compliance costs.⁸⁵ Two, these banking institutions fear criminal prosecution from working with state-compliant businesses under federal money laundering laws.⁸⁶

The banking and investment issues that are prevalent in the industry cause many cannabis companies to run strictly cash businesses.⁸⁷ Organizations that operate on cash run into some unintended negative consequences. Holding large amounts of cash can be risky and unsafe (talked about in Part X). The cannabis organizations are forced to pay their taxes, employees, and vendors in cash which is not ideal. It also makes it harder for state regulators to track sales.⁸⁸

The SAFE Banking Act made it through the House with overwhelming bipartisan support, but not the Senate yet, even though its companion bill had 33 cosponsors.⁸⁹ “The SAFE Banking Act would allow federally overseen financial institutions to serve cannabis-related businesses that comply with the laws in the states where they operate.”⁹⁰ It would essentially take away the extra compliance costs that federally insured banks face when working with state compliant businesses in the industry and also alleviates the fear of criminal prosecution when lending. Senate Banking Committee Chairman Mike Crapo (R, ID) has concerns about the bill stating “that the SAFE Banking Act does not address the high-level potency of marijuana, marketing tactics to children, lack of research on marijuana’s effects, and the need to prevent bad actors and cartels from using the banks to disguise ill-gotten cash to launder money into the financial system.”⁹¹ Are these concerns valid? Yes. But, if anything, more uniform regulation between states—like perhaps through an interstate compact—could put the states in a better spot to regulate these areas more effectively and efficiently. Passage of the SAFE Banking Act would provide a “stopgap solution ahead of federal legalization” that would certainly help the cause for the Alliance’s plan.⁹²

Federal legalization would obviously be better for banking, but even allowing interstate commerce between two or more states that agree upon it, might allow banks to feel more comfortable with lending money, even without explicit legislation. This is also true in regards to private investment. “Successful interstate trade on any scale, between even just two states, will clearly signal to investors that the future of interstate trade is of pressing urgency to incorporate into their investment strategy.”⁹³ This would allow investors to allocate their funds in the right places. For example, “[a]n investor in New York could then focus on opportunities related to local product development with the promise that affordable raw materials would be available from California and skip investing in indoor agriculture.”⁹⁴ The passage of the plan would allow for banking and investment to flourish in this industry.

B. Tax Implications

It is no secret that states and the federal government require taxes to operate efficiently for the benefit of their people. If the plan was put into effect, economic output would surely boom. When business is flourishing and employed workers have money in their pockets to spend, governments gain on tax revenue. The plan allocates supply and demand in the correct places and would be helpful for creating jobs and increase spending. It would provide governments with the opportunity to collect taxes on this potentially thriving industry. If states like New

⁸⁵ H. R. 1595, 116th Cong. (2019).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Nathan Reiff, *SAFE Banking Act*, INVESTOPEDIA (Sept. 26, 2019), <https://www.investopedia.com/safe-banking-act-4587773>.

⁹⁰ Ben Curren, *After Sweeping The Elections, What Comes Next For Cannabis?*, FORBES (Dec. 3, 2020), <https://www.forbes.com/sites/bencurren/2020/12/03/after-sweeping-the-elections-what-comes-next-for-cannabis/?sh=291d07264691>.

⁹¹ Michael Correia, *Senate Banking Committee Chairman Gives Cannabis Industry Coal for Christmas*, NCIA, <https://thecannabisindustry.org/tag/fincen/>.

⁹² Mitchell, *supra* note 71.

⁹³ Moore, *supra* note 27.

⁹⁴ *Id.*

Jersey, who just recently legalized recreational marijuana, cannot meet the high demand of consumers, the government simply misses out on all of that tax revenue. If an interstate compact was in place and New Jersey was able to be additionally supplied from a state like California, the tax revenue would then be attainable. A more comprehensive and uniform tax system “would increase business growth and benefit local economies.”⁹⁵

As far as implications for the businesses themselves, IRS code 280E currently says that “[n]o deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.”⁹⁶ Just from a fairness standpoint, if the various government entities are going to benefit from tax revenue, these businesses should be treated like other compliant non-industry businesses and benefit from the tax code as applicable. Perhaps if part of the plan were to de-schedule cannabis, this would put cannabis out of the scope of 280E.

C. How Do We Regulate?

Success of this plan is not quite full federal legalization of cannabis, but a step toward that. So, if this plan were to work, the state governments would need to think about how they want to regulate interstate cannabis commerce. “It’s important that lawmakers get national cannabis policy right, which means both respecting each state’s prerogative to handle its own policy and allowing interstate marijuana trade among those states that legalize.”⁹⁷

If Congress or the Executive Branch were to simply take a stance that they would not interfere with an interstate compact between two states, then the states would need to regulate themselves through the compact. This solution would most likely not allow for true interstate commerce across state lines which are not parties to the compact. So, outside of the two states, all federal rules would still apply. If, however, action was taken to de-schedule cannabis and explicitly allow for interstate commerce between two states through interstate compacts, while also allowing for the products to *travel* through states that are not parties to the compact, then the most proper framework to regulate would be something like how hemp is regulated under the 2018 Farm Bill. A federal agency like the USDA or FDA would broadly regulate the compacts between states and essentially approve the terms of each interstate compact. Of course, the second plan seems more like full legalization and is not likely to occur anytime soon, therefore, the interstate compacts and the two states party to the compact seem like the most likely to regulate. That is, if the federal government says they will not take action.

X. IS NOT ALLOWING INTERSTATE CANNABIS COMMERCE DANGEROUS?

The federal laws on cannabis can be seen as similar to the federal government’s prohibition on alcohol in the 1920s. It was “federally illegal to produce, import, transport, and sell alcoholic beverages but consumers were safe from prosecution.”⁹⁸ The consumers of alcohol did not just cease their demand. They looked to a place where they could get their hands on it. This demand led to an opportunity for organized crime to be the supply in a quite thriving black market.⁹⁹ The same happens with cannabis. Folks who seek it will get it.

⁹⁵ Southard, *supra* note 83.

⁹⁶ 26 U.S.C.A. § 280E (1982).

⁹⁷ Southard, *supra* note 83.

⁹⁸ Southard, *supra* note 83.

⁹⁹ *Id.*

New Jersey just legalized cannabis for recreational use. Being in the Northeast, they do not have the year-round outdoor cultivation luxury that a state like California does, therefore they will need to spend a lot of capital on indoor facilities which will factor into the price that they charge consumers (and still not produce even close to what California could). If this price is too high, it might push consumers to look to illicit markets where the product is cheaper. Therefore, if interstate cannabis commerce is off the table, states like New Jersey cannot get their prices down due to limited supply, which forces consumers to look to illicit markets for cheaper product, we are essentially “[propping] up . . . illegal markets that pose a public health risk.”¹⁰⁰ These state legal markets were not always in place—people have been buying cannabis products before it became legal within their state. These folks turned to illicit markets, which were usually based outside of their own state. If these same people cannot get the product they seek from their state at a reasonable price (or even at all, based on supply/demand), then they will turn back to the same out of state illicit markets anyway. This outcome is more dangerous than legal state cannabis as it is not regulated at all. As consumers turn back to the illicit markets, the businesses that have invested in cultivation centers and retail stores are impacted and could suffer from loss of profit (and loss of tax revenue for the state and federal government).¹⁰¹

The banking and investment issues talked about earlier also compound the problems facing the industry. These cultivators and retailers do not always have proper the funding to run their businesses as they would like. Because of the lack of funding, they might be incentivized to cut corners or fund their organizations through an illicit market. Additionally, “[i]nterstate commerce could provide not only safer products but also a greater variety of quality and highly competitive offerings. For medical patients and wellness-oriented consumers, interstate commerce may be the only viable means of access for certain formulated cannabis products or cultivars, especially in smaller state markets.”¹⁰²

These state-compliant businesses are also mostly all cash businesses. Running a cash business is dangerous on multiple levels. For a business to simply hold cash, you open the door to safety concerns. It is an invitation for money laundering, organized crime, and robbery concerns.¹⁰³ As an example, a Marine veteran employed as a security guard at a dispensary in Colorado was recently shot and killed in a robbery of the dispensary.¹⁰⁴ Not to mention during a global pandemic, exchanging cash in transactions and between vendors and employees is risky. The virus could spread through the physical currency and increases the chance to exposure.¹⁰⁵

XI. IS IT EVEN POSSIBLE TO EFFECTIVELY POLICE INTERSTATE CANNABIS COMMERCE

In a scenario where two adjacent and touching states like California and Oregon enter into an interstate compact or an agreement similar to it (potentially fulfilling the demands of step one), but does not receive congressional approval for such agreement, do California and Oregon just cease to move further with the agreement that they each made as sovereign states? Maybe. But there is also a possibility that these states take the risk and proceed on without formal approval.

At the end of the day, state borders are just artificial lines that are drawn on a map. There are no walls separating

¹⁰⁰ Samantha Vanegas, *Drug Testing in Legal States – Corporate Policy vs. State Law*, NCIA, <https://thecannabisindustry.org/category/new-york/>.

¹⁰¹ See Moore, *supra* note 27.

¹⁰² *Id.*

¹⁰³ H. R. 3546, 116th Cong. (2019).

¹⁰⁴ *Id.*

¹⁰⁵ Katrina Skinner, *Does the Safe Banking Act Still Have a Chance?*, JD SUPRA LLC (July 24, 2020), <https://www.jdsupra.com/legalnews/does-the-safe-banking-act-still-have-a-87478/>.

states or checkpoints in between states where your car is searched for cannabis. Enforcing prohibition against interstate cannabis commerce is basically unworkable. Some states could choose to employ an efficient illegality tactic like Uber did when starting in new cities and basically operate as they would like within their interstate compact without formal approval from Congress or the Executive branch.¹⁰⁶

This is all said with the additional problem (talked about in Part VIII) that faces law enforcement of hemp and marijuana looking the exact same. It seems unworkable for law enforcement to be able to distinguish between the two when seizing a traveler engaged in interstate commerce between two legal states.

XII. THE POLITICAL LANDSCAPE

With a lot of initial uncertainty about the election results in the Presidential and Senate races, one thing is certain—cannabis won. We saw a Democrat who had spoken about cannabis reform in the most recent debate win with a running mate who also now appears to be pro-cannabis. We also saw four new states legalize marijuana for recreational use, bringing the total to fifteen states, with states like New York and Pennsylvania not far behind.¹⁰⁷

A. 2020 Presidential Election

The 2020 Election was very promising to the future of cannabis. Signs point to President Biden and Vice President Kamala Harris following the Democratic platform in calling for the federal rescheduling and decriminalization of marijuana” while the Republican platform seems to be grounded in staying pretty much where we are at, “which means more mass incarcerations and a ‘tough on crime’ stance for petty drug possession charges.”¹⁰⁸ During the months leading up to this long awaited election, many critics of President Biden were quick to point to Biden’s past in the Senate—and rightfully so. Biden was credited with writing the Violent Crime Control and Law Enforcement Act of 1994 (known as the 1994 Crime Bill).¹⁰⁹ This bill put many people in prison for possession of recreational drugs and was a large component in the War on Drugs.¹¹⁰ Nothing he can say or do will make up for his stance on that issue in 1994, but his recent actions show that he has changed his tune on marijuana possession. During a debate against former President Donald Trump, Biden denounced his stance and owned up to the mistake on live television with 63 million people watching.¹¹¹ After doing so, it is likely that President Biden will keep to his word and look to reform the industry. What is even more promising is the recent actions of his Vice President, Kamala Harris.

Harris also had a bit of a mixed past on the topic, but she also has pledged that at least decriminalizing marijuana would be a top administrative priority for their ticket.¹¹² She says that they are committed to decriminalizing marijuana and expunging the records of those convicted for marijuana related offenses in hopes of giving people affected by the War on Drugs an opportunity to jobs and housing—specifically the numbers of disproportionate black men in this country affected.¹¹³ Harris was not always very cannabis friendly. While serving as the District

¹⁰⁶ See Yanelys Crespo, *Uber v. Regulation: “Ride-Sharing” Creates a Legal Gray Area*, 25 U. MIAMI BUS. L. REV. 79 (2016).

¹⁰⁷ Alicia Wallace, *Legal Weed Won Big in the Election*, CNN (Nov. 6, 2020), <https://www.cnn.com/2020/11/06/business/cannabis-election-win/index.html>.

¹⁰⁸ Jean-Gabriel Fernandez, *What Does a Biden-Harris Presidency Mean for Marijuana?*, SHEPHERD EXPRESS (Nov. 4, 2020), <https://shepherdexpress.com/hemp/cannabis/what-does-a-biden-harris-presidency-mean-for-marijuana/>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Kyle Jaeger, *Kamala Harris Touts ‘Commitment’ To Marijuana Decriminalization And Expungements Under Biden Administration*, MARIJUANA MOMENT (Oct. 20, 2020), <https://www.marijuanamoment.net/kamala-harris-touts-commitment-to-marijuana-decriminalization-and-expungements-under-biden-administration/>.

¹¹³ *Id.*

Attorney in San Francisco and Attorney General of California, her and her team convicted thousands of people for small marijuana offenses.¹¹⁴ Recently she has really changed her own tune. While running for the presidential office herself, she came out to support full federal legalization of marijuana.¹¹⁵ As a senator in 2019, she also was the lead sponsor on a comprehensive federal legalization bill.¹¹⁶ While running on the ticket as the Vice President, she tempered her tone a little bit and focused in more on what Biden was speaking on—expungement and decriminalization efforts.¹¹⁷ Additionally, she defended marijuana small businesses at the beginning of the COVID shutdown when relief was being given and these businesses were not entitled, stating, “Marijuana small businesses employ more than 240,000 workers and should be allowed to access coronavirus relief funds, too. My colleagues and I are pushing to ensure they’re not left out of Congress’s next relief package.”¹¹⁸ Vice President Harris might end up being very crucial to the future of cannabis in this country. In a “60 Minutes” interview from October of 2020, she stated that she will bring her progressive policies (including marijuana legalization) with her to the Biden administration.¹¹⁹

Both Biden and Harris seem to be trending in the right direction for cannabis reform. While maybe not completely on board with full federal cannabis legalization, they both appear to be taking steps towards widespread reform. What is very promising is that Biden, while maybe not fully on board for federal legalization, seems to be of the mindset of “letting states set their own policies and legalizing medical cannabis.”¹²⁰ As spoken about earlier, this is encouraging for a future executive memo that may specifically speak to interstate cannabis commerce.

B. Where Congress Stands

By winning both of the Georgia run-off senate elections, the Democrats control the U.S. Senate with the tiebreaker going to Vice President Elect Harris. By winning the seats, the Democrats are in a fantastic position to bring cannabis related bills to the Senate floor. This could potentially include legislation to allow for interstate cannabis commerce between states that agree to terms in an interstate compact. This could also have across the aisle support as some red states “approved cannabis ballot measures on Election Day. Sen. John Thune (R-SD), the party’s whip, for example, now represents constituents who voted to legalize both recreational and medical marijuana by solid margins.”¹²¹

The states also showed up in support of cannabis. Arizona, Montana, New Jersey, and South Dakota voted to legalize it for recreational use.¹²² States like New York and Pennsylvania also appear to not be far behind to legalize it.¹²³ These state elections allow for more states to achieve success of step one of the plan. It also gives a big sign to Congress and the President that the people and states whom they represent appear to be in support of cannabis reform, legalization efforts, and the benefits that a flourishing cannabis industry could provide to an economy in trouble—so also a promising sign for step two of the plan.

¹¹⁴ Fernandez, *supra* note 108.

¹¹⁵ Fernandez, *supra* note 108.

¹¹⁶ Kyle Jaeger, *What Joe Biden’s Presidential Victory Means For Marijuana In 2021*, MARIJUANA MOMENT (Nov. 9, 2020), <https://www.marijuanamoment.net/what-joe-bidens-presidential-victory-means-for-marijuana-in-2021/>.

¹¹⁷ *Id.*

¹¹⁸ Fernandez, *supra* note 108.

¹¹⁹ Norah O’Donnell, *Joe Biden Makes the Case for Why He Should Be President*, 60 MINUTES (Oct. 25, 2020), <https://www.cbsnews.com/news/joe-biden-democratic-presidential-candidate-kamala-harris-60-mintues-interview-norah-odonnell-2020-10-25/?ftag=CNM-00-10aab7d&linkId=102842868>.

¹²⁰ Jaeger, *Kamala*, *supra* note 112.

¹²¹ Jaeger, *What*, *supra* note 116.

¹²² Wallace, *Legal*, *supra* note 107.

¹²³ *Id.*

XIII. IS THIS PLAN LIKELY TO WORK?

This plan should become reality eventually, however, I do not think that early 2021 is very likely at this point. I understand that the Cole Memorandum was rescinded and bills like the State Cannabis Commerce Act have not gained much traction, but this was all before an economic recession following the COVID-19 pandemic. Opening up this industry would be a big step forward in recovering as a nation. I think the first part of the plan, for governors from at least two fully-legal states to sign an interstate compact, can be easily achieved. We already see Oregon looking to import and export between states. In the Northeast, various states met to discuss sharing a regulatory scheme. Governors want businesses in their states to thrive. This plan would surely allow new cannabis businesses to start operating immediately by importing from out of state. The second part of the plan, to obtain congressional approval, seems harder to do, but for reasons already mentioned, appears to be plausible. At a nationwide level, our legislative and executive branches are elected by the people. If they are truly watching out for their constituents, they should want a new private industry to thrive and provide economic stimulus and job creation. This plan is beneficial to our country and should be implemented.