

# HIGH AND DRY: EVALUATING SOLUTIONS TO CANNABIS AFFILIATED BUSINESS' INABILITY TO OBTAIN BANKRUPTCY PROTECTIONS

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## I. INTRODUCTION

Now is the time for cannabis reform. Recent developments in the United States' political landscape and bankruptcy law have increased national focus on state-legal marijuana industries. The contentious presidential election between Donald Trump and Kamala Harris highlighted cannabis as a leading voter issue, and, for the first time, both candidates supported marijuana measures.<sup>1</sup> The political stage has never been riper for resolving the conflict between the federal government and state governments' policies on cannabis. If President Trump chooses to make cannabis reform a priority, thousands of businesses, directly and indirectly related to state-legal marijuana industries, would have access to all the federal government can offer. Specifically, such businesses would have access to bankruptcy protections for the first time.

Businesses involved in the marijuana industry, tangentially or directly, have been largely unable to access bankruptcy protections, which are only available at the federal level, due to the conflict between state legality and federal illegality.<sup>2</sup> The nation is on the precipice of opening the door to these debtors and creditors who could be able to thrive if given the opportunities that bankruptcy provides.

This Comment will address the conflict between federal and state governments and argues that the most viable solution is to pass the STATES 2.0 Act and enact it into law. Part II of this Comment will

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<sup>1</sup> German Lopez, *America's Embrace of Marijuana*, N.Y. Times (Oct. 24, 2024), <https://www.nytimes.com/2024/10/24/briefing/americas-embrace-of-marijuana.html>.

<sup>2</sup> Lance P. Martin & Tyler J. Russell, *Even Indirect Income from Cannabis Can Get You Banned from Bankruptcy*, WARD & SMITH, P.A. (May 4, 2022), <https://www.wardandsmith.com/articles/even-indirect-income-from-cannabis-can-get-you-banned-from-bankruptcy>.

explain the current state of cannabis-affiliated businesses involved in bankruptcy proceedings and elucidate how this status obstructs the main goals of bankruptcy. Part III will discuss the history of cannabis-affiliated businesses in the bankruptcy system and show the modern trend of displaying judicial flexibility in discretionary decisions. Then, Part IV will analyze purported solutions from scholars to remedy the conflict. Part V will then consider these solutions when analyzing the STATES 2.0 Act, ultimately finding that it is the most viable option because it resolves the conflict while maintaining marijuana's status as a Schedule I drug under the CSA. Finally, Part VI concludes that Congress should push forward the STATES 2.0 Act to further the goals of bankruptcy courts, bring uniformity to those decisions, and provide an opportunity for cannabis-affiliated businesses to succeed after falling on hard times.

## II. THE CURRENT CONFLICT AND ITS IMPACT ON THE GOALS OF BANKRUPTCY

### A. *The Status of Cannabis-Affiliated Businesses Regarding Bankruptcy*

Today, most Americans live in states that have legalized marijuana, either recreationally or medicinally.<sup>3</sup> Twenty-four states and the District of Columbia have legalized the drug recreationally, and an additional fourteen states have legalized its medicinal use.<sup>4</sup> None of these legal growers, sellers, distributors, or even landlords of buildings who rent to cannabis businesses can obtain bankruptcy relief if they fall on hard financial times.<sup>5</sup> These state-legal businesses cannot get relief because all bankruptcy cases are controlled by the federal government under Article I of the Constitution.<sup>6</sup> Congress has the power to “establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.”<sup>7</sup> Since the federal government lists marijuana as a Schedule I drug under the Controlled Substances Act (CSA),<sup>8</sup> bankruptcy courts must view state-legal cannabis-affiliated businesses as

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<sup>3</sup> Athena Chapekis & Sono Shah, *Most Americans Now Live in a Legal Marijuana State – and Most Have at Least One Dispensary in Their County*, PEW RSCH. CTR. (Feb. 29, 2024), <https://www.pewresearch.org/short-reads/2024/02/29/most-americans-now-live-in-a-legal-marijuana-state-and-most-have-at-least-one-dispensary-in-their-county>.

<sup>4</sup> *Id.*

<sup>5</sup> Martin & Russell, *supra* note 2.

<sup>6</sup> *Bankruptcy*, U.S. CTS., <https://www.uscourts.gov/services-forms/bankruptcy> (last visited Sept. 21, 2024); U.S. CONST., art. I, § 8.

<sup>7</sup> U.S. CONST. art. I, § 8, cl. 4.

<sup>8</sup> *Drug Scheduling*, U.S. DRUG ENF'T ADMIN., <https://www.dea.gov/drug-information/drug-scheduling> (last visited Sept. 21, 2024).

violating the law.<sup>9</sup> Although not discussing bankruptcy directly, the U.S. Supreme Court's decision in *Gonzalez v. Raich* supports this proposition.<sup>10</sup> There, the Court held that Congress's inclusion of marijuana in the CSA supersedes contrary state law because of the Commerce Clause.<sup>11</sup> Additionally, the Supremacy Clause of Article VI, Paragraph 2 of the U.S. Constitution established that federal law supersedes conflicting state law.<sup>12</sup> This means that, although thirty-eight states have legalized marijuana in some form, for bankruptcy purposes, the illegality of cannabis in federal law is the only one that counts.

When filing for bankruptcy, businesses must choose a chapter—or type—of bankruptcy to file under.<sup>13</sup> Each chapter presents different forms of relief for specific types of businesses or individuals.<sup>14</sup> Cannabis-affiliated businesses generally file under chapter 7 or chapter 11 bankruptcy, but, depending on their circumstances, subchapter V is also available. Chapter 7 is for liquidation proceedings, chapter 11 is for reorganization proceedings, and subchapter V is specifically for small-business reorganization proceedings.<sup>15</sup> A trustee facilitates a chapter 7 liquidation by assembling all available assets, reducing them to money, satisfying creditors, and closing the estate.<sup>16</sup> Normally, a chapter 11 case does not require handling of assets by a trustee because the debtor may remain in possession of their property throughout the reorganization process.<sup>17</sup> But if the case involves “fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management,” the court may order the appointment of a trustee.<sup>18</sup> In this case, the debtor acts through the trustee's authority, and the trustee handles the assets.<sup>19</sup> As discussed in Part III of this Comment, the court often orders the appointment of a trustee, or the U.S.

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<sup>9</sup> Keith C. Owens, Brett Axelrod & Joshua Horn, *Bankruptcy: Can It Help Cannabis Businesses That Go Up in Smoke?*, FOX ROTHSCHILD (Aug. 14, 2024), <https://www.fox-rothschild.com/publications/chapter-15-bankruptcy-can-it-help-cannabis-businesses-that-go-up-in-smoke>.

<sup>10</sup> See generally *Gonzales v. Raich*, 545 U.S. 1 (2005) (holding state law permitting medicinal marijuana use does not preclude Congress using its Commerce Clause powers to criminalize marijuana use).

<sup>11</sup> See *id.* at 22.

<sup>12</sup> U.S. CONST. art. VI, § 2.

<sup>13</sup> DOUGLAS G. BAIRD, *THE ELEMENTS OF BANKRUPTCY* 15–18 (7th ed. 2022).

<sup>14</sup> *Id.*

<sup>15</sup> MICHAEL D. CONTINO, CONG. RSCH. SERV., R45137, *BANKRUPTCY BASICS: A PRIMER* 11–22 (2022).

<sup>16</sup> *Id.* at 11–14.

<sup>17</sup> *Id.* at 15–16.

<sup>18</sup> 11 U.S.C. § 1104(a).

<sup>19</sup> CONTINO, *supra* note 15, at 15 & 16 n.177.

Trustee moves to appoint a trustee, to handle the assets in a cannabis-related chapter 11 case of “gross mismanagement,” since the assets are illegal at the federal level.<sup>20</sup>

The federal illegality of marijuana creates many issues for debtors trying to file for bankruptcy, but the main obstacle to relief is the United States Trustee Program (USTP). The USTP is a section of the Department of Justice that acts as the watchdog of the bankruptcy system by monitoring the conduct of the parties, ensuring compliance with laws and procedures, and preventing fraud and abuse.<sup>21</sup> When a bankruptcy case is filed, the USTP assigns a case trustee to handle the debtor’s assets in chapter 7, or, in a chapter 11 case, can move to assign a case trustee.<sup>22</sup> The USTP has taken the position that cannabis-affiliated businesses may not proceed through federal bankruptcy courts.<sup>23</sup> This is because any cannabis-affiliated business is actively violating the CSA on the filing date, and the USTP and case trustees cannot be forced to administer, sell, or possess cannabis-related assets.<sup>24</sup> If a case trustee is unable to handle cannabis-related assets, then the debtors cannot achieve reorganization or liquidation of these assets, depending on which bankruptcy chapter they filed under.

In 2017, the USTP established their position in a letter, stating that the bankruptcy system should not be used in ongoing crimes, “reorganization plans that [allow] continued illegal activity may not be confirmed,” and “bankruptcy trustees and other estate fiduciaries should not be required to administer assets if doing so would cause them to violate federal criminal law.”<sup>25</sup> Due to these stipulations, it is the USTP’s policy to move for the dismissal of a cannabis-affiliated bankruptcy case whenever possible.<sup>26</sup> The USTP then published a letter to chapter 7 and 13 case trustees, advising them to inform their U.S. Trustee whenever the debtor they are working with has marijuana-

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<sup>20</sup> 11 U.S.C. § 1104(a); *see* discussion *infra* Part III.

<sup>21</sup> *About the United States Trustee Program*, U.S. DEP’T OF JUST., <https://www.justice.gov/ust/about-program> (last visited Sept. 21, 2024).

<sup>22</sup> *Id.*

<sup>23</sup> Clifford J. White & John Sheahan, U.S. DEP’T OF JUST., *Why Marijuana Assets May Not Be Administered in Bankruptcy* (Dec. 1, 2017), <https://www.justice.gov/archives/ust/blog/why-marijuana-assets-may-not-be-administered-bankruptcy>.

<sup>24</sup> Sarah A. Westby, *In re Hacienda: Bankruptcy Ruling Reveals Potential Path for Cannabis Businesses*, SHIPMAN (June 4, 2024), <https://www.shipmangoodwin.com/insights/in-re-hacienda-bankruptcy-ruling-reveals-potential-path-for-cannabis-businesses.html>.

<sup>25</sup> Clifford, *supra* note 23.

<sup>26</sup> *Id.*

related assets.<sup>27</sup> This demonstrates that the USTP's policy extends to case trustees and pervades bankruptcy proceedings that the U.S. Trustee may not be directly involved with.

To comply with the USTP mandate, U.S. Trustees usually seek dismissal of a marijuana-related chapter 11 case for "cause" under § 1112(b) of the Bankruptcy Code.<sup>28</sup> Since the Code does not define "cause," the U.S. Trustees have flexibility to assert different grounds for dismissal. Courts have held that the following circumstances constitute sufficient "cause" under § 1112(b): (1) the violation of non-bankruptcy law, (2) the violation of non-bankruptcy law establishing a lack of good faith, (3) the violation of non-bankruptcy law establishing "gross mismanagement," and (4) the violation of non-bankruptcy law as it disrupts the equitable principals of the court and requires the judge to violate her oath.<sup>29</sup> Because of the current Schedule I status of marijuana, the USTP's hands are tied as to bankruptcy cases involving cannabis-related businesses, even if the businesses are only tangentially related to the state-legal marijuana industry.

The CSA created five schedules of drugs based on a substance's accepted medical use and its abuse or dependency potential.<sup>30</sup> Under this system, Schedule I drugs are "drugs with no currently accepted medical use and a high potential for abuse."<sup>31</sup> Examples of Schedule I drugs include heroin, lysergic acid diethylamide ("LSD"), and 3,4-methylenedioxymethamphetamine ("ecstasy").<sup>32</sup> Although marijuana is illegal under federal law, in 2014, Congress passed the Rohrabacher-Farr Amendment, which states that "[n]one of the funds made available in this Act to the Department of Justice may be used, with respect to the States [that have legalized medicinal marijuana], . . . to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."<sup>33</sup>

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<sup>27</sup> Letter from Clifford J. White III, Director, Executive Office for U.S. Trustees, U.S. Dep't of Just., to U.S. Trustees (Apr. 26, 2017) (on file within the U.S. Department of Justice's website).

<sup>28</sup> 11 U.S.C. § 1112(b).

<sup>29</sup> Jean Smith-Gonnell, Gary Marsh, Michael Lafleur & Tori Lynn Remington, *Bankruptcy in the Cannabis Space*, TROUTMAN PEPPER LOCKE: REGUL. OVERSIGHT (Oct. 24, 2023), <https://www.regulatoryoversight.com/2023/10/bankruptcy-in-the-cannabis-space>.

<sup>30</sup> U.S. DRUG ENF'T ADMIN., *supra* note 8.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Consolidated and Further Continuing Appropriations Act, Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217 (2014).

This tension harms both debtors and creditors alike because without the protections of the bankruptcy system, a fresh start for the debtor or equitable distribution of assets to creditors are far less likely to occur.

B. *This Conflict Is Inimical to the Goals of Bankruptcy*

There are two main goals of our federal bankruptcy system: (1) relieving debtors of financial obligations and providing them with a fresh start and (2) efficiently maximizing the total creditor return on debts.<sup>34</sup> The fresh start is known as a “discharge” of the debtor’s debts “which consists of ‘a legal *right* not to pay’ the discharged debts as well as ‘safeguards against harassment by the creditor’ whose debt is discharged.”<sup>35</sup> If debtors cannot obtain relief in the form of discharges, automatic stays, or the typical safeguards of filing bankruptcy, then they may find themselves in even more financial ruin, and hopes of reorganization may be squashed. On the flip side, preventing the confirmation of a plan or the liquidation of assets because a business is cannabis-related harms creditors because, without trustee or judicial guidance, the business may not be able to maximize its repayment, leaving creditors completely or partly unsatisfied. This “double punishment” on debtors and creditors already suffering undermines the goals of our bankruptcy system.<sup>36</sup>

The 2017 directive from the USTP leaves bankruptcy judges with minimal guidelines on how to balance the availability of bankruptcy relief with the federal criminalization of marijuana.<sup>37</sup> Circuit courts have applied different standards when evaluating U.S. Trustees’ motions to dismiss marijuana-related bankruptcy cases,<sup>38</sup> and this unequal administration of the law confuses lower courts, state-legal cannabis industries, and the public on how their cases may proceed. If bankruptcy courts must consistently dismiss cases for “cause” that include any illegality from a debtor, many bankruptcy cases would end in

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<sup>34</sup> DOUGLAS G. BAIRD, *supra* note 13, at 33; Douglas G. Baird, Anthony J. Casey & Randal C. Picker, *The Bankruptcy Partition*, 166 U. PA. L. REV. 1675, 1676 (2018), [<https://doi.org/10.2139/ssrn.3110210>].

<sup>35</sup> Contino, *supra* note 15, at 1 (emphasis added).

<sup>36</sup> Lauren Timlin, *Harvesting Highs but No Relief for the Lows: The Inconsistent Treatment of Marijuana Businesses by Bankruptcy and Tax Law*, 36 EMORY BANKR. DEV. J. 395, 413 (2020).

<sup>37</sup> Shane G. Ramsey & David M. Barnes, Jr., *Bankruptcy Courts’ Buzzkill of the Marijuana Industry*, LAW360 (Aug. 1, 2019, at 12:54 ET), <https://www.law360.com/articles/1183968/bankruptcy-courts-buzzkill-of-the-marijuana-industry>.

<sup>38</sup> *See infra* Part III.

dismissal.<sup>39</sup> “Cause” includes engaging in any form of illegal conduct while in bankruptcy court because compliance with non-bankruptcy law is required by statute.<sup>40</sup> This rule would harm those whom Congress tried to protect via the Bankruptcy Code, “including creditors, debtors, employees of debtors, and local governments and communities that depend on debtors’ ability to reorganize their finances and resume making contributions to commerce and society.”<sup>41</sup> Additionally, without an automatic stay granted upon filing for bankruptcy, creditors are not protected from a “race to collect,” where the debtor’s assets go to whichever creditor seizes them first.<sup>42</sup> An across-the-board bar of cannabis-affiliated businesses’ ability to file for bankruptcy harms both creditors and debtors while simultaneously contravening the bankruptcy system’s purposes.

### III. HISTORY OF CANNABIS AFFILIATED BUSINESSES IN THE BANKRUPTCY SYSTEM: THE MODERN TREND OF JUDICIAL FLEXIBILITY

Since state legalization began, any business with contacts to state-legal cannabis industries has largely been denied bankruptcy protection. This Part will begin by discussing how early decisions shaped current jurisprudence and highlight how the Ninth Circuit in *In re Hacienda* opens the door for increased judicial flexibility when using discretion in cases that involve marijuana.

#### A. *Tied Hands: Demonstrating Bankruptcy Courts’ Inability to Adjudicate Cases Involving Marijuana Assets*

In recent years, the number of bankruptcy cases relating to cannabis increased significantly due to the expansion of medicinal and recreational legalization by states. In 1996, California voters legalized medical marijuana in their state.<sup>43</sup> About sixteen years later, Colorado and Washington legalized the recreational use of marijuana and kick-started the trend for other states.<sup>44</sup> Since 2012, thirty-eight states and the District of Columbia have legalized the use of marijuana in some

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<sup>39</sup> *In re Hacienda Co., LLC*, 654 B.R. 155, 165 (Bankr. C.D. Cal. 2023); Christopher Ghio, Yosina Lissebeck & Tyler Powell, *Debtors Doing Illegal Things*, DINSMORE (Jan. 16, 2024), <https://www.dinsmore.com/publications/debtors-doing-illegal-things>; *infra* Part II.C.

<sup>40</sup> *In re Hacienda Co., LLC*, 647 B.R. 748, 751 (Bankr. C.D. Cal. 2023).

<sup>41</sup> *In re Hacienda Co., LLC*, 654 B.R. 155, 165 (Bankr. C.D. Cal. 2023).

<sup>42</sup> *Id.*

<sup>43</sup> Alex Leeds Matthews & Christopher Hickey, *More U.S. States are Regulating Marijuana*. See *Where It’s Legal Across the Country*, CNN (Apr. 19, 2024, at 11:33 ET), <https://www.cnn.com/us/us-states-where-marijuana-is-legal-dg/index.html>.

<sup>44</sup> *Id.*

way either medicinally, recreationally, or both.<sup>45</sup> Unsurprisingly, the increase in legalization coincided with the increase in bankruptcy litigation in the budding industry.

Until recently, courts applied a seemingly bright-line rule to marijuana-affiliated businesses that filed for bankruptcy, which barred them from obtaining relief. In 2012, in the wake of legalization in Colorado and Washington, this treatment became clear. In *In re Rent-Rite Super Kegs West Ltd.*, the U.S. Bankruptcy Court for the District of Colorado dismissed a chapter 11 case where the debtor received about 25 percent of its revenue from leasing a warehouse to a state-legal marijuana business.<sup>46</sup> The court reasoned that the case must be converted to a chapter 7 filing or dismissed for “cause” under § 1112(b) of the Bankruptcy Code because the debtor’s post-petition criminal behavior constituted “gross mismanagement.”<sup>47</sup> The court further emphasized that it would not allow a debtor conducting criminal activity in violation of the CSA to benefit from the bankruptcy process.<sup>48</sup> This strict decision set the stage for subsequent cases to follow a virtually per se rule that marijuana-affiliated businesses could not successfully seek bankruptcy protection.

Two years later, in *In re Arenas*, the same court expanded its holding in *In re Rent-Rite Super Kegs West Ltd.* to dismiss a bankruptcy case where the case trustee would have been required to administer cannabis-related assets.<sup>49</sup> In *In re Arenas*, the court considered chapter 7 debtors who operated a marijuana grow facility and leased commercial space to a marijuana dispensary.<sup>50</sup> The court reasoned that both the debtors’ violation of the CSA and the impossibility of the trustee’s administering the estate’s assets without also violating the CSA required dismissal of the case.<sup>51</sup> Even under this virtually per se rule, the court felt the need to express that its hands were tied: “[T]he result is devastating for the Debtors. The Debtors’ need the relief that would otherwise be available to them under the Bankruptcy Code. It is a relief that, under the circumstances, the Court cannot provide.”<sup>52</sup>

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<sup>45</sup> Chapekis, *supra* note 3.

<sup>46</sup> *In re Rent-Rite Super Kegs W. Ltd.*, 484 B.R. 799, 802 (Bankr. D. Colo. 2012).

<sup>47</sup> *Id.* at 808–09.

<sup>48</sup> Kara N. McCord, *The Swinging Bankruptcy Doors for Marijuana-Related Businesses: Navigating the Bankruptcy Code’s Section 1129(a)(3) Requirement in a Post-Garvin World*, 16 RUTGERS BUS. L.J. 151, 173 (2020).

<sup>49</sup> Stuart I. Gordon & Matthew V. Spero, *Marijuana Businesses in Bankruptcy: Courts Just Say No*, 15 PRATT’S J. BANKR. L. 198, 202 (2019).

<sup>50</sup> *In re Arenas*, 514 B.R. 887, 888–89 (Bankr. D. Colo. 2014).

<sup>51</sup> *Id.* at 895.

<sup>52</sup> *Id.*

On appeal, the Bankruptcy Appellate Panel for the Tenth Circuit affirmed the decision to dismiss.<sup>53</sup> The panel answered the question in no uncertain terms: “Can a debtor in the marijuana business obtain relief in the federal bankruptcy court? No.”<sup>54</sup> The panel affirmed this seemingly bright-line rule but, again, lamented the outcome, “the debtors [were] unfortunately caught between pursuing a business that the people of Colorado have declared to be legal and beneficial, but which the laws of the United States . . . proscribe and subject to criminal sanction.”<sup>55</sup> Even during the strictest periods of CSA enforcement in bankruptcy courts, judges consistently felt that the law placed debtors in untenable circumstances.

By the time *In re Way to Grow* was decided in 2018, numerous courts agreed that marijuana-related debtors were simply not eligible for bankruptcy relief.<sup>56</sup> The case of *In re Way to Grow* seemed like a final slam of the door leading to bankruptcy protection for cannabis-affiliated businesses because the court found that “although the Debtors were not violating the CSA through complicity in their marijuana growing customers’ crimes, another provision of the CSA was violated based on a lesser *mens rea* by simply knowing how the Debtors’ products would be used.”<sup>57</sup> In *In re Way to Grow*, the debtors’ business involved the sale of indoor hydroponic equipment used to grow many different kinds of crops.<sup>58</sup> The court found ample evidence that the debtors had reasonable cause to believe that their equipment would be used by their customers to manufacture marijuana.<sup>59</sup> Because of this, the court concluded that the debtors continued to violate section 843(a)(7) of the CSA.<sup>60</sup> This section states that it is unlawful for anyone, knowingly or intentionally, “to manufacture, distribute, export, or import . . . equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance.”<sup>61</sup> The court held that this violation constituted “cause” to dismiss the case under § 1112(b) of the Bankruptcy Code.<sup>62</sup> In its conclusion, the court bemoaned that “[t]he result

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<sup>53</sup> *Arenas v. United States Tr.*, 535 B.R. 845, 847 (B.A.P. 10th Cir. 2015).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 854.

<sup>56</sup> See *Gordon & Spero*, *supra* note 49, at 198.

<sup>57</sup> *Id.* at 200.

<sup>58</sup> *In re Way to Grow, Inc.*, 597 B.R. 111, 114–15 (Bankr. D. Colo. 2018).

<sup>59</sup> *Id.* at 129.

<sup>60</sup> *Id.* at 131.

<sup>61</sup> 21 U.S.C. § 843(a)(7).

<sup>62</sup> *In re Way to Grow, Inc.*, 597 B.R. at 132.

in this case may be viewed by many as inequitable. The Debtors are insolvent, and their business could benefit significantly from reorganization under the Bankruptcy Code.”<sup>63</sup> The court also stressed that, even if its decision seems unjust, it is bound by federal law and Congress alone has the ability to create a solution.<sup>64</sup> These cases demonstrate that bankruptcy judges grapple with the inherent unfairness that various debtors feel and consistently point to a solution outside of the bankruptcy system—congressional action—to remedy the conflicting laws.

B. *Open-Minded Courts and the Shift Toward Flexibility*

In the same year as the *In re Way to Grow* decision, the court in *Olson v. Van Meter* challenged the idea of a bright-line rule for the dismissal of bankruptcy cases involving marijuana-related businesses or assets. Although the court stated that other grounds may call for the case’s dismissal, the court reasoned that the mere existence of marijuana near a case should not mandate such a result.<sup>65</sup> *Olson* set the stage for the opinion in *Garvin v. Cook*, decided a year later, in 2019.

In *Garvin*, the court considered a debtor’s collection of real estate companies that sought chapter 11 protection.<sup>66</sup> One of the companies leased property to a marijuana grower, and the U.S. Trustee argued that the debtor’s plan should not be confirmed because the lease involved means forbidden by law under § 1129(a)(3) of the Bankruptcy Code.<sup>67</sup> The U.S. Trustee also tried to dismiss the case under § 1112(b)’s “gross mismanagement” provision, but the court stated that the U.S. Trustee waived the defense by failing to renew it.<sup>68</sup> The court also dismissed the U.S. Trustee’s theory because § 1129(a)(3)’s plain text “directs bankruptcy courts to police the means of a reorganization plan’s *proposal*, not its substantive provisions.”<sup>69</sup> Ultimately, the court affirmed the bankruptcy court’s confirmation of the plan and held that it met the requirements of § 1129(a).<sup>70</sup> The *Garvin* decision created a narrow option for struggling cannabis-affiliated businesses that did not

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<sup>63</sup> *Id.* at 133.

<sup>64</sup> *Id.*

<sup>65</sup> Gordon, *supra* note 49, at 206; *Olson v. Van Meter (In re Olson)*, No. NV-17-1168-LTiF, 2018 Bankr. LEXIS 480, at \*15–16 (B.A.P. 9th Cir. Feb. 5, 2018) (Tighe, M., concurring).

<sup>66</sup> *Garvin v. Cook Invs. NW, SPNWY, LLC*, 922 F.3d 1031, 1033 (9th Cir. 2019).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 1034.

<sup>69</sup> *Id.* at 1033.

<sup>70</sup> *Id.* at 1036.

exist before.<sup>71</sup> In light of this, if a reorganization plan of a cannabis-related business reaches the confirmation stage, they “may be confirmed regardless of the inclusion of any substantive illegality at the federal level.”<sup>72</sup> The narrow opening from the *Garvin* court represented a shift that courts may “be more open-minded about cannabis companies and access to federal bankruptcy law.”<sup>73</sup>

Nevertheless, the bankruptcy courts in a post-*Garvin* world have differed on their acceptance of the Ninth Circuit’s reasoning. The subsequent cases suggest that the *Garvin* decision’s influence on future jurisprudence is uncertain.<sup>74</sup> For example, the decision on the debtor’s appeal in *In re Way to Grow* came after the *Garvin* Court’s ruling.<sup>75</sup> The Colorado District Court explained that the trustee relied on § 1129(a)(3) to argue that the plan was not proposed in “good faith,” rather than on “means forbidden by law,” and thus did not accept the Ninth Circuit’s reasoning because it analyzed the incorrect portion of the statute.<sup>76</sup> Another subsequent case, *In re Basrah Custom Design, Inc.*, questioned in its footnotes the *Garvin* court’s leniency in allowing the confirmation of the chapter 11 plan after it refused to dismiss the case on the grounds of the § 1112(b) “gross mismanagement” motion, stating that the “[r]efusal, on waiver grounds, arguably [was] questionable, because it allowed the affirmation, by a *federal* court, of the confirmation of a Chapter 11 plan under which a debtor would continue to violate *federal* law under the CSA.”<sup>77</sup>

There are, however, a few decisions that support the *Garvin* court. In *In re CWNevada LLC*, the U.S. Bankruptcy Court for the District of Nevada suggested that there may be cases where relief is appropriate for debtors who generate income from marijuana-related activities.<sup>78</sup> This supports the result in *Garvin*.<sup>79</sup> The court in *CWNevada*, however,

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<sup>71</sup> See McCord, *supra* note 48, at 153.

<sup>72</sup> *Id.*

<sup>73</sup> Todd E. Phillips & Jeanna Rickards Koski, *Garvin and its Aftermath: The Ninth Circuit Upholds a Bankruptcy Plan Contemplating Income from a Cannabis-Related Source and Several Bankruptcy Courts Quickly Weigh In*, CAPLIN & DRYSDALE (July 8, 2019), <https://www.caplindrysdale.com/publication-garvin-and-its-aftermath-the-ninth-circuit-upholds-a-bankruptcy-plan-contemplating-income-from-a-cannabis-related-source-and-several-bankruptcy-courts-quickly-weigh-in>.

<sup>74</sup> See Edward S. Adams, *When Cannabis Businesses Fail: Assignment for the Benefit of Creditors as an Alternative to Bankruptcy*, 22 UTAH L. REV. 967, 983 (2022).

<sup>75</sup> *In re Way to Grow, Inc.*, 610 B.R. 338, 341 (D. Colo. 2019).

<sup>76</sup> *Id.* at 346–47.

<sup>77</sup> *In re Basrah Custom Design, Inc.*, 600 B.R. 368, 381–82 n.38 (Bankr. E.D. Mich. 2019).

<sup>78</sup> *In re CWNevada LLC*, 602 B.R. 717, 747 (Bankr. D. Nev. 2019).

<sup>79</sup> Phillips & Koski, *supra* note 73.

distinguished *Garvin* because, procedurally, there was no plan confirmation before them, and, unlike *Garvin*, here the debtor engaged directly in the marijuana business rather than merely benefitting from the industry's indirect support.<sup>80</sup> This decision seemingly limits the already narrow opening from *Garvin* to apply only to “downstream” businesses that are affiliated with the cannabis industry.

C. *The New Hope for Judicial Discretion*

In the years following *Garvin*, the status quo remained largely the same for marijuana-affiliated businesses filing for bankruptcy. A recent decision from the U.S. Bankruptcy Court of the Central District of California in *In re Hacienda Co., LLC*, however, has signaled a possibility for some “downstream” marijuana-affiliated businesses to successfully liquidate or reorganize under the bankruptcy system.<sup>81</sup>

In *In re Hacienda*, a debtor operated in the manufacturing, packaging, and distribution of marijuana-related products to dispensaries in California but subsequently transferred these assets to a Canadian company, Lowell Farms.<sup>82</sup> The debtor received a 9.4 percent share of the company, now under Lowell Farms.<sup>83</sup> In the debtor's chapter 11 reorganization plan, they proposed selling these shares, and the U.S. Trustee filed a § 1112(b) motion to dismiss because the debtor was in violation of the CSA.<sup>84</sup> The court denied this first motion, stating that, under the record, the debtor was not violating the CSA post-petition.<sup>85</sup> The U.S. Trustee filed a second motion to dismiss under § 1112(b), stating that the debtor had not withdrawn from a conspiracy to violate the CSA and that the plan violated 18 U.S.C. §§ 1956 and 1957, which would characterize the plan as money laundering.<sup>86</sup> The court found that the debtor probably had not withdrawn from a conspiracy to violate the CSA, but noted that “Congress did not adopt a ‘zero tolerance’ policy that requires dismissal of any bankruptcy case involving violation of [any criminal law].”<sup>87</sup>

The court further explained that a broad reading of the “cause” element of dismissal would disrupt the entire bankruptcy system because most bankruptcy cases involve prior or ongoing violations of

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<sup>80</sup> *CWNevada*, 602 B.R. at 730.

<sup>81</sup> See Westby & Lapenta, *supra* note 24.

<sup>82</sup> *In re Hacienda Co., LLC*, 654 B.R. 155, 158–59 (Bankr. C.D. Cal. 2023).

<sup>83</sup> *Id.* at 159.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 159–60.

<sup>87</sup> *Id.* at 163–64 (alteration in original).

some law, like failing to pay taxes or violating health and safety regulations.<sup>88</sup> The court carved out a middle ground where it can exercise its discretion to determine whether a business's involvement in the cannabis industry warrants the dismissal of its case.<sup>89</sup> Applying this middle ground, the court stated that the U.S. Trustee "ha[d] not shown how Debtor's orderly postpetition liquidation of its stock in Lowell Farms offend[ed] the principles in the Bankruptcy Code in any way, let alone establishe[d] sufficient 'cause' to mandate dismissal under § 1112."<sup>90</sup> Ultimately, the court denied the U.S. Trustee's second motion to dismiss.<sup>91</sup>

The *In re Hacienda* decision is the first time a cannabis-affiliated business survived a U.S. Trustee's motion to dismiss based on violating the CSA.<sup>92</sup> The attitude of the court presents a significant shift from the era of *In re Rent-Rite Super Kegs West Ltd.*, *In re Arenas*, and *In re Way to Grow*, signaling a retreat from the zero-tolerance policy of dismissing any bankruptcy case that involves a marijuana-affiliated business.<sup>93</sup> Ultimately, the decision outlines the recent trend of bankruptcy judges' reluctance to uphold the per se rule of dismissal under § 1112(b).<sup>94</sup>

Since the *In re Hacienda* decision, only the First Circuit Bankruptcy Appellate Panel has cited it to further the notion that "Congress has not articulated a "zero-tolerance" policy that requires dismissal of any bankruptcy case involving [a] violation of the CSA (or other activity that might be proven to be illegal)."<sup>95</sup> Given the recency of the decision and the specific nature of the cases it pertains to, the First Circuit's adoption of *In re Hacienda*'s reasoning is nonetheless promising for future courts to similarly adopt a flexible standard regarding dismissal of marijuana-related cases.

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<sup>88</sup> *In re Hacienda Co., LLC*, 654 B.R. at 164–65.

<sup>89</sup> *Id.* at 166.

<sup>90</sup> *Id.* at 168.

<sup>91</sup> *Id.* at 171.

<sup>92</sup> Westby & Lapenta, *supra* note 24.

<sup>93</sup> George Singer & Rachel Gillette, *Why Bankruptcy Is a Budding Alternative for Cannabis Cos.*, LAW360 (Oct. 12, 2023, at 16:59 ET), <https://www.law360.com/articles/1731613>.

<sup>94</sup> Smith-Gonnell et al., *supra* note 29.

<sup>95</sup> *Blumsack v. Harrington*, 657 B.R. 505, 515 (1st Cir. B.A.P. 2024) (quoting *In re Hacienda Co., LLC*, 647 B.R. 748, 754 (Bankr. C.D. Cal. 2023)).

IV. SOLUTIONS TO THE CONFLICT: THE INADEQUACY OF  
RESCHEDULING AND STATE SOLUTIONS COMPARED TO  
BANKRUPTCY PROTECTIONS

Although there are notable alternatives to bankruptcy for cannabis-affiliated businesses that are experiencing financial trouble, none offer the same amount or type of protection to debtors, nor benefits to creditors. This Section will discuss the obvious solution of rescheduling or “descheduling” marijuana from the CSA, along with other legislative efforts, and analyze the state-offered solutions of receiverships and assignments for the benefit of creditors. Ultimately, this Part argues that removing marijuana from the CSA is unlikely in the near future, most congressional efforts are unlikely to become law, and receiverships and assignments for the benefit of creditors are inferior to bankruptcy relief.

A. *Rescheduling and Current Legislative Efforts’ Implausibility*

The most obvious solution to the present conflict is to legalize the use of marijuana at the federal level by removing it, or “descheduling” it, from the CSA. Congress can reschedule or remove marijuana from the CSA through legislation, and the executive branch can act through the Drug Enforcement Administration (DEA) to reschedule marijuana via the notice-and-comment rulemaking process.<sup>96</sup> On August 29, 2023, the U.S. Department of Health and Human Services (HHS) recommended reclassifying cannabis from a Schedule I substance to a Schedule III substance under the CSA.<sup>97</sup> This shift would recognize that cannabis has medical value on a federal level.<sup>98</sup> On April 30, 2024, the “Attorney General circulated a proposal to reclassify marijuana from Schedule I to Schedule III,” and “[o]nce published by the Federal Register, it will initiate a formal rulemaking process as prescribed by Congress in the Controlled Substances Act.”<sup>99</sup> In light of this advancement, Representative Earl Blumenauer (D-Or.), co-chair of the Congressional Cannabis Caucus, said, “Marijuana was scheduled more

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<sup>96</sup> JOANNA R. LAMPE, CONG. RSCH. SERV., LSB11105, LEGAL CONSEQUENCES OF RESCHEDULING MARIJUANA 3 (2024).

<sup>97</sup> Michelle Simakis, Noelle Skodzinski, & Tony Lange, *U.S. Health and Human Services Department Recommends Cannabis Reclassified to Schedule III*, CANNABIS BUS. TIMES (Aug. 31, 2023, at 12:19 ET), <https://www.cannabisbusinesstimes.com/news/hhs-recommendation-cannabis-schedule-3-dea>.

<sup>98</sup> *Id.*

<sup>99</sup> Michelle Simakis, Noelle Skodzinski & Tony Lange, *Update: DEA Moves to Reschedule Cannabis*, CANNABIS BUS. TIMES (May 1, 2024, at 8:15 ET), <https://www.cannabisbusinesstimes.com/news/dea-reschedules-cannabis-schedule-3> (quoting U.S. Department of Justice Director of Public Affairs, Xochitl Hinojosa).

than [fifty] years ago based on stigma, not science. The American people have made clear in state after state that cannabis legalization is inevitable. The Biden-Harris Administration is listening.”<sup>100</sup> Although re-scheduling marijuana as a Schedule III substance would be a step in the right direction for cannabis-affiliated businesses to obtain bankruptcy relief, the executive action would not change the current bankruptcy conflict for the large majority of cannabis-related companies.

Since reclassifying marijuana as a Schedule III substance will not solve the conflict, Congress would have to legislate a solution. There are several pending bills that would “deschedule” marijuana, but the one with the most legislative momentum is the Marijuana Opportunity Reinvestment and Expungement (MORE) Act.<sup>101</sup> Rep. Jerrold Nadler (D-N.Y.) introduced the MORE Act on September 20, 2023.<sup>102</sup> The bill would remove marijuana from the CSA and eliminate criminal penalties for those who manufacture, distribute, or possess cannabis.<sup>103</sup> The bill currently has ninety-five cosponsors, which reflects its clear support among legislators, but no one from the Republican Party has signed on as a cosponsor.<sup>104</sup> Notably, the MORE Act does not have a Senate counterpart either, which limits its movement to the House. If the MORE Act did pass through Congress and became law, it would fix the bankruptcy conflict, but in the current political climate, this seems unlikely. In the 117th Congress, the MORE Act passed the House of Representatives with 220 yeas votes to 204 nay votes.<sup>105</sup> The yeas included three Republican Representatives.<sup>106</sup> But the Senate never took up the bill for a vote, so the bill died until reintroduction in the 118th Congress. Since the House of Representatives and the Senate are controlled by the Republican Party in the 119th Congress, the MORE Act is unlikely to move forward.

Another bill impacting the status of marijuana is the Secure and Fair Enforcement Regulation (SAFER) Banking Act.<sup>107</sup> This bill would “provide[] protections for federally regulated financial institutions

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<sup>100</sup> *Id.*

<sup>101</sup> Marijuana Opportunity Reinvestment and Expungement (MORE) Act, H.R. 5601, 118th Cong. (2023).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* §§ 3(a), 10(a).

<sup>104</sup> H.R. 5601.

<sup>105</sup> Marijuana Opportunity Reinvestment and Expungement (MORE) Act, H.R. 3617, 117th Cong. (as passed by House, Apr. 1, 2022).

<sup>106</sup> *Id.*

<sup>107</sup> Secure and Fair Enforcement Regulation (SAFER) Banking Act, S. 2860, 118th Cong. (2023).

that serve state-sanctioned marijuana businesses.”<sup>108</sup> Under the bill, proceeds from state-sanctioned marijuana transactions would no longer constitute unlawful activity.<sup>109</sup> Although this sounds promising, the bill limits its protections to “depository institution[s],” which excludes U.S. Trustees and bankruptcy courts from its definition.<sup>110</sup> Therefore, for the purposes of this discussion, the bill would not change the current conflict, but it reflects the increasingly flexible attitude of lawmakers to legislate in the cannabis space.

### B. *Receiverships*

A receivership is a state tool that assists creditors in recovering funds in default and helps struggling businesses avoid bankruptcy.<sup>111</sup> A receivership may also be used to restructure a company to return to profitability.<sup>112</sup> During this process, a receiver, or trustee, manages the company and its assets.<sup>113</sup> Receiverships are not technically legal processes, but they are usually invoked in legal proceedings, and a receiver is assigned by a secured creditor or the court.<sup>114</sup> If restructuring fails, the court may order liquidation of the struggling company’s assets, and a liquidator would oversee the sale of those assets, resulting in the end of the company.<sup>115</sup>

A major difference between receiverships and bankruptcy is that receiverships are generally involuntarily levied against the debtor, while in bankruptcy, the debtor files seeking protection.<sup>116</sup> Cannabis-affiliated businesses may utilize receiverships to their benefit if a bankruptcy court dismisses their case. One example of a successful receivership involved a cannabis company called the Guild San Jose.<sup>117</sup> The company defaulted on a loan, and the court appointed a receiver who turned the company around and made it profitable again within a few

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* §§ 2(4), 3(a)(1).

<sup>111</sup> Carla Tardi, *Receivership vs. Bankruptcy: Key Differences and Benefits for Recovery*, INVESTOPEDIA (Aug. 22, 2025), <https://www.investopedia.com/terms/r/receivership.asp>.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*; STEPHEN J. LUBBEN, *THE LAW OF FAILURE: A TOUR THROUGH THE WILDS OF AMERICAN BUSINESS INSOLVENCY LAW* 68 (2018) [<https://doi.org/10.1017/9781108100069>].

<sup>115</sup> Tardi, *supra* note 111.

<sup>116</sup> Ryan C. Griffith, *Cannabis Receiverships: The Alternative for State Legal Cannabis Businesses Seeking Financial Rehabilitation Locked Out of Bankruptcy Court by the Controlled Substances Act*, 45 SEATTLE U. L. REV. 1107, 1113 (2022); LUBBEN, *supra* note 114, at 69.

<sup>117</sup> Griffith, *supra* note 116, at 1119–20.

months.<sup>118</sup> The receiver ultimately sold the company for \$8.25 million, repaid the creditors, and compensated the previous owners as well—an outcome that would not have occurred but for the receivership.<sup>119</sup> Although receiverships present an option for cannabis-related debtors, they fall short of the benefits that could be achieved through bankruptcy.

This Comment does not provide a complete analysis of the differences between state receiverships and bankruptcies, but it is important to highlight a few of the drawbacks of receiverships when discussing alternatives for cannabis-affiliated businesses. For example, receiverships are not a great option for businesses looking to reorganize because they often end by selling some or all of the company's assets.<sup>120</sup> Receiverships also do not require all of a debtor's creditors to participate in the same proceeding, so receiverships fail to maximize the value distributed to these creditors in the way a bankruptcy proceeding would.<sup>121</sup> Unlike bankruptcy, receiverships do not discharge debts, and receivers, unlike trustees, cannot recover preferences.<sup>122</sup> Finally, state receiverships vary widely, making them difficult to implement when a business operates in multiple states.<sup>123</sup> Overall, receiverships do provide an option for cannabis-affiliated creditors, but they are by no means a replacement for bankruptcy proceedings.

### C. *Assignments for the Benefit of Creditors (ABCs)*

Assignment for the benefit of creditors (“ABC”) is a state alternative to bankruptcy that allows debtors to liquidate their assets.<sup>124</sup> Unlike a receivership, an ABC is voluntary for the debtor, and a trustee manages the assets to pay off creditors.<sup>125</sup> The benefits of ABCs for insolvent businesses include the ability to choose the trustee overseeing the

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<sup>118</sup> *Id.*

<sup>119</sup> *Auction of Licensed California Cannabis Business Brings in \$8.25 Million*, MJBIZDAILY (June 7, 2019), <https://mjbizdaily.com/auction-of-licensed-california-marijuana-business-brings-in-8-25-million>.

<sup>120</sup> Griffen Thorne & Ethan Minkin, *Distressed Cannabis Cos. Have a Few Options, with Caveats*, LAW360 (Apr. 6, 2023, at 16:44 ET), <https://www.law360.com/articles/1593775/distressed-cannabis-cos-have-a-few-options-with-caveats>.

<sup>121</sup> Laura N. Coordes, *Reorganizing Healthcare Bankruptcy*, 61 B.C. L. REV. 419, 454 (2020).

<sup>122</sup> *Id.* at 454–55.

<sup>123</sup> *Id.* at 454.

<sup>124</sup> *Assignment for Benefit of Creditors*, CORNELL L. SCH.: LEGAL INFO. INST., [https://www.law.cornell.edu/wex/assignment\\_for\\_benefit\\_of\\_creditors](https://www.law.cornell.edu/wex/assignment_for_benefit_of_creditors) (last visited Oct. 25, 2025).

<sup>125</sup> *Id.*

process instead of relying on a court or creditor-appointed handler.<sup>126</sup> ABCs can avoid judicial oversight, and they tend to be more efficient and quicker than bankruptcy proceedings because of this.<sup>127</sup> But not every state allows court avoidance. For instance, Delaware requires an individual who voluntarily assigns their estate to file an inventory of their assets “with the office of the Register in Chancery of their county.”<sup>128</sup> Additionally, if a company is trying to buy the assets of the failing company, the purchasing company can avoid liability to unsecured creditors.<sup>129</sup> Moreover, the speed and efficiency of ABCs require fewer litigation and financial advisory costs than a bankruptcy proceeding that may take years.<sup>130</sup> In terms of maximizing the possibility of full repayment, ABC’s efficiency is certainly beneficial to creditors.<sup>131</sup>

Nevertheless, like receiverships, ABCs have downsides compared to bankruptcy. First, an ABC offers no help to a company that wishes to reorganize rather than liquidate.<sup>132</sup> Second, the laws governing ABCs vary state to state, with some states maintaining common law oversight while others embrace much stricter statutes.<sup>133</sup> These varying laws can make it difficult for a large company spanning multiple states to liquidate under an ABC.<sup>134</sup> Third, “ABCs present unique challenges for cannabis businesses, since many of the assets of a cannabis business, such as a license or cannabis inventory, cannot be easily assigned to a third party that does not hold cannabis licenses.”<sup>135</sup> This unique challenge of the marijuana industry limits the pool of potential buyers of a company’s assets because without the proper licensing, the purchaser cannot profit off the assets.<sup>136</sup> Fourth, ABCs do not offer the same types of protections as bankruptcies, notably the automatic stay that gives debtors breathing room by preventing the creation of actions against them.<sup>137</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Adams, *supra* note 74, at 987; DEL. CODE ANN. tit. 10, § 7381(2024).

<sup>129</sup> *Assignment for Benefit of Creditors*, *supra* note 124.

<sup>130</sup> Adams, *supra* note 74, at 994–95.

<sup>131</sup> *Id.* at 994.

<sup>132</sup> *Id.* at 1003.

<sup>133</sup> *Assignment for Benefit of Creditors*, *supra* note 124.

<sup>134</sup> Adams, *supra* note 74, at 1002; LUBBEN, *supra* note 114, at 58.

<sup>135</sup> Thorne & Minkin, *supra* note 120.

<sup>136</sup> Adams, *supra* note 74, at 1007.

<sup>137</sup> *Id.* at 1003–04.

## V. THE VIABLE SOLUTION: THE STATES 2.0 ACT

The premier solution for resolving the bankruptcy and cannabis-affiliated business conflict is the STATES 2.0 Act. Section A begins with a discussion of the Act's text and the benefits of the bill's narrow goal and its bipartisan support. Then, Section B discusses President Donald Trump's position on marijuana reform and argues that the President will likely sign the STATES 2.0 Act into law if it is passed by Congress.

### A. *The STATES 2.0 Act is Bipartisan and Narrowly Tailored*

The most viable option to quickly resolve the conflict between cannabis-affiliated businesses and the federal bankruptcy system is the STATES 2.0 Act. The Act would remove marijuana from federal prohibition and allow states to decide its status within their borders.<sup>138</sup> U.S. Representative David Joyce (R-OH) reintroduced the bill on April 17, 2025.<sup>139</sup> Currently, the bill has five cosponsors consisting of three Republicans and two Democrats, making the effort bipartisan.<sup>140</sup> In the 118th Congress, the STATES 2.0 Act had nine cosponsors—five Republicans and four Democrats—so it is likely that more representatives will sign on.<sup>141</sup> The text of the STATES 2.0 Act states, “Notwithstanding any other provision of law, the provisions of this Act as applied to marijuana . . . shall not apply to any marijuana manufactured, produced, possessed, distributed, dispensed, administered, or delivered in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana.”<sup>142</sup> The STATES 2.0 Act would give the states the power to enforce it, whereas the MORE Act grants the federal government enforcement authority.<sup>143</sup>

The States Reform Act of 2023 has a similar premise to the STATES 2.0 Act in that it would give some authority back to the states

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<sup>138</sup> Adam Hoffer & Jacob Macumber-Rosin, *States 2.0 Act Sets the Stage for Federal Cannabis Policy*, TAX FOUND. (Aug. 5, 2024), <https://taxfoundation.org/blog/states-act-2-0-federal-cannabis-reform>.

<sup>139</sup> STATES 2.0 Act, H.R. 2934, 119th Cong. (2025).

<sup>140</sup> See *H.R. 2934 - STATES 2.0 Act, 119th Congress (2025-2026)*, CONGRESS.GOV, <https://www.congress.gov/bill/119th-congress/house-bill/2934/cosponsors> (last visited Sept. 7, 2025).

<sup>141</sup> See *H.R. 6673 - STATES 2.0 Act, 118th Congress (2023-2024)*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/house-bill/6673/cosponsors> (last visited Sept. 7, 2025).

<sup>142</sup> STATES 2.0 Act, H.R. 2934, 119th Cong. § 4 (2025).

<sup>143</sup> Jean E. Smith-Gonnell & Cole White, *Where Things Stand: A Summary of Pending Federal Cannabis Legislation*, REUTERS (Feb. 7, 2024, at 16:13 ET), <https://www.reuters.com/legal/litigation/where-things-stand-summary-pending-federal-cannabis-legislation-2024-02-07>.

by treating marijuana like alcohol.<sup>144</sup> Both the STATES 2.0 Act and the States Reform Act task the Food and Drug Administration (FDA) with regulating marijuana products.<sup>145</sup> The States Reform Act is also a bipartisan bill, with two Republicans and two Democrats signing on,<sup>146</sup> making it an appealing option as a solution to the current bankruptcy conflict. But there are two hurdles in the States Reform Act that the STATES 2.0 Act would not have to jump over. First, the States Reform Act goes further than the STATES 2.0 Act by expunging all nonviolent federal marijuana convictions.<sup>147</sup> Convincing colleagues in Congress to support the main point of the bill is one challenge, but adding this provision may alienate some potential representatives and senators who would vote yes but for the erasure of criminal records. Second, the States Reform Act would open the floodgates of marijuana in interstate commerce without providing safeguards for passage between states.<sup>148</sup> This presents potential conflicts between states that have legalized marijuana completely, legalized it partially, or have not legalized it at all.

In contrast, the STATES 2.0 Act “makes clear that if a state elects to retain a legal prohibition on marijuana, then federal prohibition will continue to apply within that state. The legislation also stops short of expressly allowing marijuana companies to engage in any form of cross-state commerce.”<sup>149</sup> Importantly, the bill does provide that the transport of marijuana products through states is protected “if the originating and destination States or territories permit, as applicable, the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana.”<sup>150</sup> While the bill does not lay out a regulatory scheme for supervising cannabis transportation, it does remind states of the dormant commerce clause and that the federal government is responsible for ensuring cannabis products end up where they belong in interstate commerce.<sup>151</sup> Since the STATES 2.0 Act does not include a criminal expungement provision, and it protects states that wish to keep marijuana out of their territories, it is

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<sup>144</sup> States Reform Act of 2023, H.R. 6028, 118th Cong. § 201 (2023).

<sup>145</sup> Smith-Gonnell & White, *supra* note 143.

<sup>146</sup> H.R. 6028.

<sup>147</sup> *Id.* § 102(e); Geoffrey Lawrence, *Frequently Asked Questions About the STATES Act 2.0*, REASON FOUND. (Dec. 14, 2023) <https://reason.org/backgrounder/frequently-asked-questions-about-states-act-2-0>.

<sup>148</sup> *See* Lawrence, *supra* note 147.

<sup>149</sup> *Id.*

<sup>150</sup> H.R. 2934, 119th Cong. § 4(c)(1)(A) (2025).

<sup>151</sup> *Id.* § 2(1); Lawrence, *supra* note 147.

more likely to move through the 119th Congress than the States Reform Act.

Overall, the STATES 2.0 Act is a “meaningful improvement over the status quo of federal prohibition or even prospective rescheduling.”<sup>152</sup> Though not a complete overhaul of the federal system, the Act is a step that could garner the necessary support to move substantive marijuana legislation forward.<sup>153</sup> The STATES 2.0 Act strikes the right balance between solving the bankruptcy woes of cannabis-affiliated companies, while maintaining enough flexibility and hesitancy to feasibly make it through Congress and become law.

#### B. *President Trump Ignites Hope for Federal Marijuana Reform*

After determining that the STATES 2.0 Act could make it through Congress, the next step to becoming law is a signature from the President. Conveniently, Trump has expressed previous support for marijuana legislation and a desire to resolve the differences in state and federal legality of the drug by shifting the power to states.<sup>154</sup> Notwithstanding his demonstrated support, Trump has yet to lay out a specific policy or vision for cannabis regulation in the future. Without a clear policy statement from the President or his staff, this Comment can merely speculate as to whether he would sign the STATES 2.0 Act should it reach his desk.

President Trump’s history and statements suggest that he would likely sign the STATES 2.0 Act. He detailed his support for federal legislation to give states control over the legalization of marijuana and provide marijuana companies with access to banking services.<sup>155</sup> Trump has demonstrated his support for giving power back to the states in other policy areas. For example, he consistently celebrates the decision to overturn *Roe v. Wade*. In the presidential debate on September 10, 2024, he stated that the decision was right because the power is now in state’s hands to legislate around abortion: “But each individual state is voting. It’s the vote of the people now. It’s not tied up in the

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<sup>152</sup> Lawrence, *supra* note 147.

<sup>153</sup> *Id.*

<sup>154</sup> Jacob Sullum, *Bowing to Public Opinion, Trump and Harris Both Agree That Marijuana Should Be Legal*, REASON (Sept. 4, 2024, at 12:01 ET), <https://reason.com/2024/09/04/bowing-to-public-opinion-trump-and-harris-both-agree-that-marijuana-should-be-legal>.

<sup>155</sup> Natalie Fertig & Braktkton Booker, *Donald Trump’s Unlikely Weed Wager*, POLITICO (Sept. 15, 2024, at 10:00 ET), <https://www.politico.com/news/2024/09/15/donald-trump-marijuana-legalization-00179205>.

federal government.”<sup>156</sup> Some question the extent to which Trump is actually in favor of states’ rights, however, due to his inconsistent record in supporting them during his prior administration.<sup>157</sup> Specifically regarding marijuana, former Attorney General Jeff Sessions rolled back the Obama-era policy of noninterference with the state-legal marijuana industry.<sup>158</sup> Senator Cory Gardner (R-CO) stated that the roll-back constituted “a trampling of Colorado’s rights, [and] its voters,” after the decision came out.<sup>159</sup> The comment prompted Trump to denounce the Justice Department’s threats to enforce federal law on state-legal marijuana.<sup>160</sup> Trump even stated that he “probably will end up supporting” bipartisan legislation.<sup>161</sup> Since he made these decisions in 2018, Trump has emphasized his support for state power over marijuana legislation.<sup>162</sup>

If the STATES 2.0 Act does not pass through Congress and reach the President’s desk, Trump may simply choose to support the rescheduling process. Although Trump may roll back many of former President Biden’s initiatives, the rescheduling of marijuana could be the rare exception when Trump supports a Biden policy.<sup>163</sup> The hearings to reschedule marijuana began the day after Trump’s inauguration, and they might offer insight into the Trump Administration’s views.<sup>164</sup> That said, the rulemaking process to reclassify drugs under the CSA

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<sup>156</sup> Riley Hoffman, *READ: Harris-Trump Presidential Debate Transcript*, ABC NEWS (Sept. 10, 2024, at 23:58 ET), <https://abcnews.go.com/Politics/harris-trump-presidential-debate-transcript/story?id=113560542>.

<sup>157</sup> See Michael Stratford, *Trump Endorses States’ Rights – but Only When He Agrees with the State*, POLITICO (Apr. 2, 2018, at 05:00 ET), <https://www.politico.com/story/2018/04/02/trump-states-rights-education-sanctuary-drilling-492784>.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> Emma Withrow, *Fact Check Team: Flip-flopping? The Evolution of Trump and Harris’ Policy Positions*, THE NAT’L NEWS DESK (Sept. 3, 2024, at 17:25 ET), <https://thenationaldesk.com/news/fact-check-team/evolution-trump-harris-policy-positions-2024-election-politics-voters-immigration-marijuana-abortion-fracking-health-insurance-taxes-fact-check-team>; see also Evan Halper, *Trump Administration Abandons Crackdown on Legal Marijuana*, L.A. TIMES (Apr. 13, 2018, at 16:10 ET), <https://www.latimes.com/politics/la-na-pol-marijuana-trump-20180413-story.html>.

<sup>161</sup> Bill Chappell, *Trump Plans to Revoke Many Biden Policies. Where Does That Leave Marijuana?*, NPR (Nov. 11, 2024, at 12:15 ET), <https://www.npr.org/2024/11/11/nx-sl-5184119/trump-biden-marijuana-legalization>. But see Laura Jarrett, *Sessions Nixes Obama-era Rules Leaving States Alone That Legalize Pot*, CNN (Jan. 4, 2018, at 17:44 ET), <https://www.cnn.com/2018/01/04/politics/jeff-sessions-cole-memo/index.html>.

<sup>162</sup> Chappell, *supra* note 161.

<sup>163</sup> *Id.*

<sup>164</sup> See Mary Jane Gibson, *The Weed Industry Isn’t Feeling Too Anxious about Trump 2.0*, ROLLING STONE (Dec. 8, 2024), <https://www.rollingstone.com/culture/features/trump-efk-weed-industry-republicans-democrats-1235196527>.

can take up to nine years.<sup>165</sup> A salient example of the process occurred in 2014, when the DEA rescheduled hydrocodone combination products (HCP) from Schedule III to Schedule II.<sup>166</sup> After HHS gave its initial scheduling recommendation in 2008, the DEA did not issue a final rule until 2014.<sup>167</sup> Here, HHS provided its recommendation for re-scheduling marijuana in 2023.<sup>168</sup> Using the HCP timeline, the DEA would provide a final rule in 2029, one year after Trump's term ends. This delay opens the door for legislation, and Trump may wish to add marijuana reform to his legacy before his final term ends.

Although some critics believe that Trump's statements supporting marijuana reform are illusory,<sup>169</sup> Trump announced on social media that he supported Amendment 3 in his home state of Florida,<sup>170</sup> which would legalize recreational use of marijuana.<sup>171</sup> Some also critique Trump's changing rhetoric on marijuana reform, but he stands firm that it is time for a change in federal cannabis policy to solve the state and federal legal conflict.<sup>172</sup> As his recent posts, campaign rhetoric, and interviews support state's rights to legislate their marijuana industries, Trump would likely sign the STATES 2.0 Act if it reached his desk.

Of all the different bills this Comment discusses, the STATES 2.0 Act is the one most likely to move forward because it has bipartisan support, makes an incremental change that does not flatly "deschedule" marijuana, is the most likely to survive a vote in a Congress deeply divided on the issue, and would likely be signed by President Trump.

## VI. CONCLUSION

The nation is primed and ready for marijuana reform legislation under President Trump, and if cannabis-affiliated businesses can access bankruptcy protections, it will enable them to restructure during

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<sup>165</sup> *Washington v. Barr*, 925 F.3d 109, 120 (2d Cir. 2019).

<sup>166</sup> Daniel Shortt, *What Is the Timeline for Rescheduling Marijuana?*, MCGLINCHEY (Mar. 21, 2024), <https://www.mcglinchey.com/insights/what-is-the-timeline-for-rescheduling-marijuana>.

<sup>167</sup> *Id.*

<sup>168</sup> Skodzinski, Simakis & Lange, *supra* note 97.

<sup>169</sup> Fertig & Booker, *supra* note 155.

<sup>170</sup> See Donald Trump (@realDonaldTrump), TRUTH SOCIAL (Sept. 8, 2024, at 23:18 ET), <https://truthsocial.com/@realDonaldTrump/posts/113105431683796730>.

<sup>171</sup> A.J. Herrington, *Trump Backs Federal Marijuana Rescheduling and Cannabis Banking Bill*, FORBES (Sept. 9, 2024, at 15:34 ET), <https://www.forbes.com/sites/ajherrington/2024/09/09/trump-backs-federal-marijuana-rescheduling-and-cannabis-banking-bill>.

<sup>172</sup> Sullum, *supra* note 154.

financial hardship; withstand economic dips; and contribute to state, local, and national economies. Congress should push forward the STATES 2.0 Act as a solution to further the goals of bankruptcy courts because it fairly maximizes repayment to creditors, allows bankruptcy protections for debtors, and brings uniformity to the circuits and bankruptcy courts. Additionally, the STATES 2.0 Act is the most viable solution because it is the bill most likely to pass through Congress and obtain President Trump's signature. As the Trump Administration's goals for marijuana reform crystallize, so will cannabis-related businesses' ability to access bankruptcy courts.