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# Northern Illinois University Law Review

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**SYMPOSIUM:  
MEDICAL MARIJUANA LEGALIZATION, A GROWING TREND:  
SOCIAL, ECONOMIC, AND LEGAL IMPLICATIONS**

**BIBLIOGRAPHY**

Medical Marijuana: An Overview of Select Resources

Therese A. Clarke Arado and Annie Mentkowski ..... 461

*The annotated bibliography provides information in a number of areas. The state laws related to legalizing medical marijuana in effect as of January 2015 are summarized. In addition to the statute summaries, annotations of select articles are provided. The greatest portion of materials annotated involves federalism discussions and employment related issues. Also included, but to a much lesser extent are family law, transportation, and attorney ethics. Additionally, a few articles on state regulatory power and other topics are included. As this bibliography was being created, the U.S. House of Representatives and Senate introduced legislation to reclassify marijuana within the Controlled Substances Act. Those bills are referenced in a section of the bibliography. At the end of the document there are lists of recent newspaper coverage of the medical marijuana laws and debates in the United States. The creators of this bibliography did not attempt to cover the breadth of information available on this topic. These resources are meant to provide a broad picture of the medical marijuana discussion at this time, along with some history of the topic. There is significantly more literature available on medical marijuana and the various legal issues surrounding it. However, this bibliography will give researchers a good start on compiling relevant materials for further study.*

**ARTICLES**

Brandeisian Experiment Meets Federal Preemption: Is Cooperative Federalism a Panacea for Marijuana Regulation?

Saby Ghoshray ..... 511

*This Article traces marijuana regulation's federal-state dichotomy through a multi-dimensional prism to evaluate states' right with a Brandeisian*

*experiment under the Constitution's Tenth Amendment. The genesis of this federalism conflict is evaluated through the ambiguity of the applicable federal law, while the federal preemption is examined through the dual lens of the Supremacy Clause and the Anti-commandeering doctrine. By evaluating the relevance of cooperative federalism through its constitutional inheritance, this Article proposes a roadmap for implementing cooperative federalism for marijuana regulation. In taking note of the deficiency in contemporary discourse in adequately contextualizing the intersecting rights framework for marijuana regulation, it is further observed that the pertinent inquiry must be indexed not at how much to regulate, but how to regulate by evaluating the collateral risks arising out of the nationwide paradigm shift toward marijuana. Finally, this Article presents the importance of viewing the evolving paradigm through a multi-dimensional prism consisting of safeguards surrounding cross-border contagion, cultural shift, injury to human health and long-term impacts from marijuana's cumulative effects - issues that may not have been encapsulated within the panoply of current state laws*

**The 2015 Federal Budget's Medical Marijuana Provision: An "End to the Federal Ban on Marijuana" or Something Less Than That?**

**Alex Kreit ..... 537**

*In 2014, Congress began to face the nearly 20-year conflict between state medical marijuana laws and federal prohibition. It did so in a somewhat curious way, however--tacking on an rider to the 2015 federal budget to block the Department of Justice from spending money to "prevent" medical marijuana States from "implementing" their laws. Some news reports trumpeted the development as an "end" to the federal ban on marijuana. But the handful of court decisions to consider the 2015 budget provision so far suggest it might not have much effect at all on federal marijuana enforcement. This essay, written for the Northern Illinois University Law Review's symposium on medical marijuana laws, examines the 2015 federal budget's medical marijuana provision and offers an argument in favor of interpreting it broadly.*

**The Worst of Both Worlds: The Wild West of the "Legal" Marijuana Industry**

**Luke Scheuer ..... 557**

*As states have legalized marijuana, they have created a booming industry that operates in violation of the federal Controlled Substances Abuse Act. Like the tobacco and alcohol industries, this new legal marijuana industry has the potential to do great harm to American consumers and communities if it is not disciplined and restrained in how it sells and develops its products. Unfortunately the federal government has not yet stepped in to regulate the industry and state governments have imposed only limited controls. In*

*addition, because of the increased threat of criminal and civil liability hanging over the industry, it has been largely shut out from attracting professional stakeholders including banks, venture capital firms, and professional managers which could help impose market discipline. In order to achieve the policy goals behind legalization of marijuana it is important that states do everything they can in the short term to regulate this industry so that it develops in a responsible manner. One of the things states can do is promote the integration of professional stakeholders into this industry. This essay explores what it means to be a “professional” in the marijuana industry and how more professionals could help mitigate some of the harm this industry poses to the public.*

**NOTE AND COMMENT**

**Fracking in Illinois: Implementation of the Hydraulic Fracturing Regulatory Act and Local Government Regulatory Authority**

**John Abendroth ..... 575**

*High-volume horizontal hydraulic fracturing (Fracking) is a relatively new means of drilling for oil and gas resources. With the knowledge that the oil and gas industry was purchasing land leases in southern Illinois and beginning to introduce fracking activities in the state, and that such activities would not be regulated under existing state law, Illinois legislators collaborated with industry and environmental interests to develop and pass the Hydraulic Fracturing Regulatory Act (HFRA or Act) in 2013. While this legislation has been considered by some to be among one of the most stringent and protective in the nation, many environmental interests and citizens opposed to fracking, nevertheless, remain extremely concerned over the potential public health, environmental and economic harms that result from these activities. In particular, although fracking may provide environmental and economic benefits to the state as a whole and to local communities, the environmental and economic harms will be felt primarily within local communities. The HFRA specifically provides municipalities with the right to regulate fracking by requiring a permit applicant to obtain approval from the municipality, but limits the rights of counties, where the majority of fracking activities will likely occur, to expressing concerns during the public comment period and requesting a public hearing on the permit application.*

*This Comment discusses the potential benefits and harms of fracking to the state and local communities, and then examines the existing rights of both municipalities and counties to exert control over the development of fracking within their local communities through the Home Rule provision of the State Constitution, the HFRA, and other existing laws. After considering the*

*historically negative attitudes about county government, and how such attitudes may have impacted the rights of counties provided in the Act by those drafting the HFRA, the Comment argues that such attitudes are archaic and do not reflect current county government construction and powers. The Comment then presents the current extent of local control available through existing zoning authority and, finally, offers several approaches that interested counties might pursue in an attempt to obtain regulatory authority similar to that already provided to local municipalities in Illinois.*

**Juvenile Sentencing in Illinois: Addressing the Supreme Court Trend Away from Harsh Punishments for Juvenile Offenders**

**Maureen Dowling .....611**

*The United States Supreme Court has steadily been changing the way it approaches juvenile sentencing since 2005. This ideological shift has occurred as a response to the increase in biological and sociological studies, which point toward fundamental differences between juveniles and adults. This Note addresses how the new mandates by the Supreme Court have been implemented around the country, with a focus on statutory changes Illinois should make moving forward. Specifically, this Note argues that there are several adjustments Illinois will have to make in regards to the way it sentences juvenile homicide offenders, in order to be considered Constitutional based on the analysis set forth by the Supreme Court in *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*. First, lengthy, consecutive term-of-years sentences should be abolished because it does not give juvenile offenders the “meaningful opportunity for release” required by *Graham*. This Note suggests that courts need to look at the idea of a “meaningful opportunity for release” differently when sentencing juveniles as opposed to adult offenders, because studies have shown that adolescents who are imprisoned have a much lower life expectancy than average. Second, Illinois should amend its sentencing statutes to require judges to consider several factors, while on record at a sentencing hearing, before sentencing a juvenile homicide offender to life in prison. These factors, laid out within this Note, will put Illinois at the forefront of ethical juvenile sentencing, while also ensuring that it does not violate the authority of *Miller*. Admittedly, these theories have been criticized for being too ‘soft’ on punishment for juveniles who are convicted of felony murder. However, the suggestions in this Note are meant to allow for the protection of the adolescent’s Eighth Amendment right to be free of cruel and unusual punishment, while also considering the severity and nature of the offense.*