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## **Cannabis and the Eastern Cherokee Nation: The Challenges, Barriers and Prospect**

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Spring 2016

# **Cannabis and the Eastern Cherokee Nation:**

## **The Challenges, Barriers and Prospect**



Gottlieb, Miranda Eve

SENIOR POLITICAL SCIENCE AND HISPANIC STUDIES

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## Abstract

State level drug policy reform has presented new challenges for federal enforcement of controlled substances, especially cannabis. In line with the autonomous nature of Native American tribes, the possibility of new medicinal access to cannabis and potential revenue sources from the retail cannabis industry draws interest from tribes seeking to follow the 24 states currently operating under adapted cannabis policies. Tribal lands remain some of the most impoverished regions of the United States, yet continued raids of tribes attempting cannabis reform raise questions about the self-determination of tribes, Native American access to healthcare, and economic development.

In an attempt to overcome the discriminatory policies in federal cannabis interdiction targeting Native Americans, tribes must implement new strategies to move forward on legalization efforts. This paper examines strategies that could be used by Native American tribes to combat regional resistance to cannabis reform. I focus particularly for the Eastern Cherokee Nation, considering the legal and social aspects of policy change. The Eastern Band of the Cherokee have the potential to become a leader in the region for marijuana reform and development. The thesis of my study is this: Through the strengthening of grassroots support, coalition building, and strategic political advocacy, tribes seeking to implement medical and/or retail cannabis programs can overcome federal interdiction and regional opposition to successfully implement new marijuana policy—policy that has the potential to improve public health, increase economic development, and reform a broken criminal justice system.

## Background on Native America

### A Brief History of Native American Policy

The history of Native American autonomy began with the formation of the United States and remains bound in the Constitution. The sole power to negotiate with Native Americans was given to Congress in Article 1, Section 8 of the U.S. Constitution, which states that:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. (United States Constitution)

Because Native Americans were viewed as sovereign nations, negotiation of economic contracts or treaties were to be handled by federal commissioners such as Benjamin Franklin and Patrick Henry, who first negotiated neutrality during the Revolutionary War (Taber- Hamilton).

Soon after, in 1789, Native American relations were placed within the purview of U.S. War Department and then the Office of Indian Affairs (which formed in 1834 and is now known as the Bureau of Indian Affairs). The Office handled the administration of land *belonging* to Native peoples. These lands were *reserved* for the tribes, though the forced removal of tribes to non-ancestral lands would bring a new connotation to the term “reservation.” Chief Justice of the Supreme Court, John Marshall, viewed Native American tribes in 1831 as “domestic dependent nations” whose relationship with the

government “resembles that of a ward to his guardian” (Cherokee Nation v. Georgia 30).

The constitutional recognition of Native people as sovereign nations allowed the United States government to exclude Native Americans as citizens (unless taxes were paid) and to deny them voting rights. This interpretation of the law lasted until 1924, when the Indian Citizenship Act (also known as the Snyder Act) was passed. However, some states refused to grant Native Americans voting rights until 1948, when Arizona and New Mexico, the final holdout states, were required by the federal government to end discriminatory policies. The introduction of the Indian Reorganization Act (IRA) of 1934 was a direct response to paternalistic legislation such as the Dawes Act of 1887, which divided Native American land plots between individuals and permitted the distribution of lands to outsiders (Boxer). The IRA, also referred to as the Indian New Deal, banned further sale of Indian land and returned any unsold or unallotted land to tribal councils. Additionally, the IRA strengthened the recognition of tribal governments and judiciaries as legitimate (Boxer).

World War II brought policy changes to Native communities which manifested in secession of property for the establishment of internment camps for Japanese-Americans and military needs. Native American men were not exempt from the draft, and approximately 25,000 served (Boxer). Following WWII, rhetoric began to emerge that called for an end to the wardship status of Native Americans. Some of the negative consequences of the IRA involved invoking communal ownership rather than delimited personal property rights, which made it difficult for individuals to have land as a personal asset to leverage, and furthermore discouraged development of the land. In response, relocation programs known as “termination policy” emerged to assimilate

Native Americans into urban life. The programs had insufficient funding, and attempts to relocate entire tribes into cities largely failed.

The Indian Self-Determination and Education Assistance Act of 1975 helped to codify tribal contracting of federal programs, and formally recognized the importance of self-rule and cultural integrity (Cook). Programs created by this act included employment training, natural resource management, and food or housing assistance. Self-determination should not be confused with sovereignty; self-determination policy should reflect the potential for tribes to realize their sovereign powers while reflecting tribal goals, opinions, and interests (Cook). The Act delineated the responsibilities and obligations of the federal government to the tribes and established provisions by which tribes could self-direct governance, health care, and education.

These legislative efforts are important to note in framing the context of the current discrepancy in marijuana policy on tribal land. A relationship of paternalism has virtually always existed. Additionally, this history of Native American/ U.S. relations sheds light on the fragmentation of property, governance, and the development of casino gaming legislation. In considering the ways that the political history of Native Americans more largely relates to ending the prohibition of marijuana, the next section will briefly outline the history of the Eastern Band of the Cherokee Indians (EBCI) in the context of the questions surrounding state-tribal relations for marijuana.<sup>1</sup>

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<sup>1</sup> The Tribe will be referred to as Eastern Band of the Cherokee Indians (EBCI) or Eastern Band of the Cherokee Nation (EBCN) throughout this paper. Both terms and abbreviations appear within documents found published by the Tribe.

## **The Eastern Cherokee Nation**

In 1818 and 1819, the Cherokee Nation located in western North Carolina submitted petitions to the state government in an attempt to secede from the Keetoowah Band and receive separate recognition from the band living in Arkansas (Harlan). The petitions endeavored to create North Carolina citizenship for members of what would later become recognized as the Eastern Band of Cherokee Indians. The strategy to attain citizenship was thought to be a protection mechanism from further cession of ancestral lands that was expected following the Battle of Horse Shoe Bend, in which U.S. forces defeated the Creek Indians of modern day Alabama and forced the Creek to surrender land.

On May 28, 1830, President Jackson Authorized the Indian Removal Act, which permitted the renegotiation of the removal of peoples from southern Indian tribal land to territory west of the Mississippi River. Some of the territory of the region included lands belonging to the Eastern Cherokee Tribe, which believed they would be exempt from removal efforts due to the land deeds that they had received. However, the deeds became null and void and as a consequence, not all of those living in Western North Carolina were able to flee. Some 25-30 percent of Cherokee sent on the Trail of Tears perished (Visit Cherokee NC). Following the removal, in 1840, the state of North Carolina began deeding white citizens ancestral lands of the EBCN, even though they themselves remained unrecognized as citizens (Harlan).

Three distinct bands formed after removal—the Cherokee Nation, the United Keetoowah Band, and the Eastern Band of Cherokee. Yet the United States continued to recognize the Cherokee uniformly rather than as three, separate and distinct tribes. As the EBCN continued to lose land through reallocation by the North Carolinian deedings, William Thomas, a white friend of the tribe, began to purchase the land in his



own name. He is considered the first lobbyist for the tribe, and was even named the only white chief of the Cherokee, though he was never actually made chief (Harlan). Through Thomas' purchases, a large territory was created and named the Qualla Boundary. The Qualla Boundary consisted of approximately 56,000 acres, seen below in Figure 1. The land was later converted from fee simple into tribal trust status for the EBCN. The property spans Swain and Jackson Counties with parcels also in Cherokee, Graham, and Haywood Counties in Western District of North Carolina. However, the land is not considered a Native American reservation, which is an official designation of the Bureau of Indian Affairs. The tribe's unique land possessory system has almost all land held in a tribal trust, but members can buy, sell, or lease land within the tribe. Leases may be established for non-tribal members. Any profits accruing from the land held in trust are to be distributed among members.

Although the EBCN is the only federally recognized tribe – 14,000 total members – in the state of North Carolina, there are eight tribes recognized by the state. The benefits of federal recognition are the services that are provided by the Bureau of Indian Affairs including social services, natural resource management, disaster relief, housing improvement, economic development programs, law enforcement, administration of tribal courts, gaming regulation, and education administration (Bureau of Indian Affairs). North Carolina's General Assembly created the N.C. Commission of Indian Affairs in 1971 to facilitate relations and programming for the tribes within the state. Those who are not members of the EBCN do not live on reservation land and generally live in urban areas.

Understanding the demographics, history, and organization of the EBCN is critical to understanding the path or potential for marijuana reform. The region and the history of strained governmental relations between the EBCN and state and federal

governments makes policy change, even changes that are recognized to be within the power of sovereign nations, difficult and fraught with tension. The complex relationship that exists between Native Americans and non-Native governments has been strained by injustices that continue today as discriminatory policies regarding marijuana implementation.

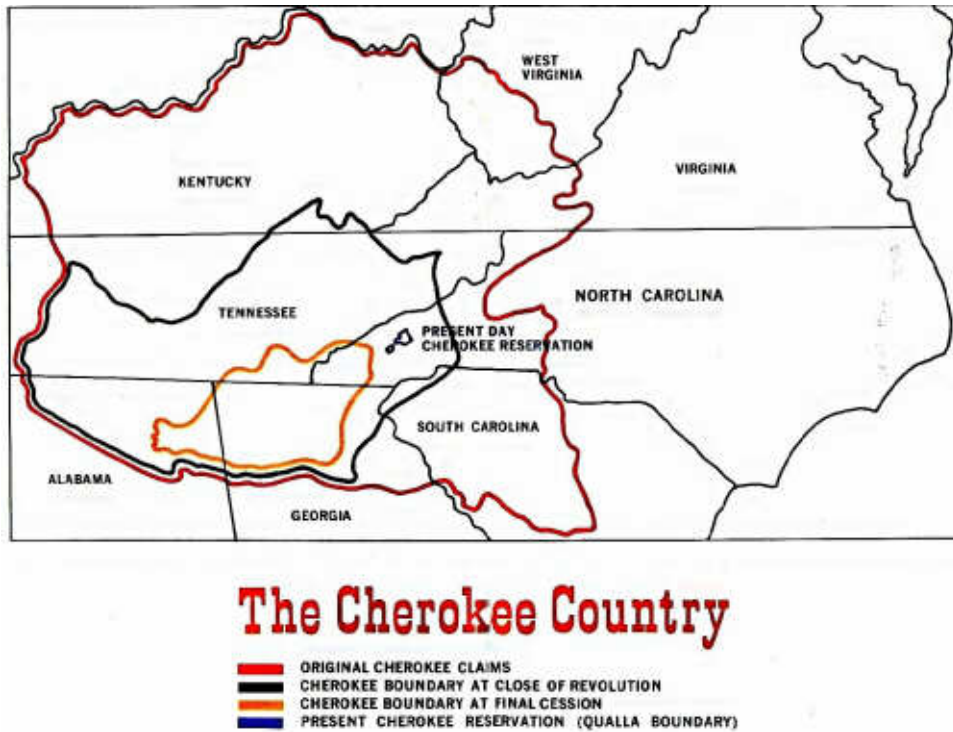


Fig. 1. The evolution of Cherokee Country; Historic and current land claims.

Source: Cherokee Bill's Teaching & Trade Center, "Cherokee History Timeline." n.d. 10 March 2016.

### *Tribal Council*

The Eastern Band of the Cherokee's Charter and Governing Document was enacted and adopted May 8, 1986. It states that in Section 1:

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<sup>2</sup> Section 1 is as follows: "The officers of the Tribe shall consist of a Principal Chief, Vice-Chief and twelve members of Council as follows: From Yellowhill Township two members; from Big Cove Township two members; from Birdtown Township two

The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe, govern the management of real and personal property held by the Tribe, and direct and assign among its members thereof, homes in the Qualla Boundary and other land held by them as a Tribe, and is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted. (Eastern Cherokee Nation Section 23)

In 2015, the Eastern Band of the Cherokee Tribal Council proposed and unanimously passed Resolution No. 40 to conduct a feasibility study on cannabis--a request for proposal- which was written by tribe member, Joseph M. Owle, a member of the Common Sense Cannabis (CSC) organization. The Resolution sought to study whether or not cannabis reform for medicinal, adult-use, or industrial purposes would benefit the tribe. To support the initiative, CSC, an EBC group, formed to advocate on behalf of marijuana reform. Common Sense Cannabis proposed that the study group consist of three members of CSC, a representative of the Legal Division of the tribe, a representative from Public Health and Human Services, and two representatives from the Tribal Council or Planning Committee with a budget not to exceed \$200,000.00 (Owle, Resolution 40). The resolution referenced nationally funded research that pointed to a reduction in substance abuse in states with medical marijuana, along with the authority of the Cherokee Nation to create and enact laws on the Qualla Boundary (Owle, Resolution 40).

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members; from Wolfetown Township two members; from Painttown Township two members; from Cherokee and Graham Counties, constituting one Township, two members”

The Principal Chief, Patrick Lambert, ultimately vetoed the resolution, and subsequently the Tribal Council unanimously upheld the veto and thus killed the resolution from moving forward. Lambert's veto largely hinged on the studies' interest in recreational marijuana use. The Chief has expressed numerous times that he believes there could be medical value to marijuana, but noted that, "I cannot, in good conscience, stand by and spend one dime of money for studying recreational use. I've seen too many mothers and families who have been hurt by recreational use of drugs" (McKie, "Recreational use" dooms cannabis study). However, even if the resolution had passed, any marijuana policy change would be required to go to a public referendum for tribal members to vote upon. The resolution sought not to put marijuana on the EBCN to a vote, but rather to appropriate funds to investigate the potential for marijuana on the land.

The Common Sense Cannabis group was not defeated since the veto of Resolution 40. Vice Chief of EBCI, Richard G. Sneed, sponsored a resolution by the organization that requires the Attorney General's Office to collaborate with representatives of CSC to establish a medical marijuana law that provides tribe cultivated and regulated access to the medicine for qualified patients. As of May 2016, the outcome on the proposed resolution had not been published on the Tribe's legislative tracking website. The proposed resolution outlines numerous conditions commonly found in other state-managed medical marijuana programs such as chemotherapy induced vomiting, anorexia, HIV / AIDS, Parkinson's Disease, but also PTSD and autism, which are not universally accepted conditions in other medical marijuana permitting jurisdictions (Owle, Resolution-Joseph M. Owle-Authorization from Tribal Council to Direct the AGs office to Draft an Ordinance for Med. Cannabis Law ).

The Council has considered numerous pieces of legislation regarding marijuana and drugs since the October 2015 executive veto. One of the most concerning pieces involves tabled Ordinance 133, which amends the Sec. 117-42 of the Cherokee Drug Commission to more harshly enforce mandatory minimum sentencing on the tribe. The amendments to the Cherokee Code proposed were a direct response to the issue of controlled substance abuse and addiction in the community. In the five whereas clauses presented in the ordinance amendment, the author, Principal Chief Patrick Lambert, says that the goal is to reduce the numbers of deaths resulting from substance use and addiction, but fails to point to any evidence that suggests that increased mandatory minimums lead to that outcome. It is important to note that this is the same Principal Chief that vetoed the investigative study on the potential of marijuana on the EBCN in October of 2015. The third clause reads,

WHEREAS, no one thing can be done by any government to combat the evils of substance abuse and addiction but many things must be done in order to measurably change the trajectory of the human and economic toll that substance abuse and addiction is causing in our community.

(Lambert)

Thankfully, the ordinance amendment was tabled. The proposed edits are an eerie and dangerous path for the tribe to pursue, especially because these are edits proposed by the Principal Chief himself which move towards a criminal justice approach that tries to be punitive rather than rehabilitative regardless of what the WHEREAS clauses states. In reference to substance abuse treatment, Lambert edits the ordinance to read in section (h) along with numerous others:

Credit for inpatient treatment. The judge may order that a term of imprisonment imposed as a condition of special probation under any level

of punishment be served as an inpatient in a facility approved by the Tribe for the treatment of substance abuse where the defendant has been accepted for admission or commitment as an inpatient but only when the mandatory minimum sentence has been served. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced, but only when such sentence is above the mandatory minimum active sentence required. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law (Lambert).

Moreover, the Attorney General is also in favor of increased penalties. In January 2016, the AG proposed an amendment to the Cherokee Code to increase the mandatory minimum fines for crimes involving alcohol and controlled substances. The additional fines requested by Ordinance 79 (tabled) apply to those involved in driving while impaired and persons referred to drug courts where new fines of \$1,000 and \$500 would be applied respectively. This legislation was tabled, but is obviously troubling in the context of creating policies that rehabilitate rather than punish individuals suffering from alcohol or drug abuse.

Legislation proposing more punitive and antiquated approaches to drug use and addiction on the tribe continue to come forward. For example, Councilmembers of the Civil Action Team, which is composed of several tribal women, have been making

appearances in the community through rallies and meetings. Lt. Col. Swayney of the Civil Action team believes that the drug problem is due to “an absence of strong family values and a lack of hope in the younger generation” (McKie, Group hopes to break chains of addiction). Juanita Wilson seems to understand that a drug free world is unattainable, saying “it’s something else that causes us to abuse each other and to pull each other down” (McKie, Group hopes to break chains of addiction). Among the potentially dangerous clauses that the Civil Action Team put forth in their proposed resolution submitted March 24, 2016 was one that pushes for seizure of land and homes as a deterrent to drug use, possession, manufacture, or sale:

WHEREAS: The Civil Action Team is requesting that proper policies pertaining to drugs being trafficked and manufactured in homes built supported and financed through Eastern Band of Cherokee Indians that homes where person(s) **who are convicted of such crimes be evicted and the Eastern Band of Cherokee Indians take full custody of that home. And these policies to be enforced and to take effect immediately. The forfeit of land the house and or any other building that is established apply as well. This is to deter person(s) of this type of illegal activity.** (Civil Action Team)

The punitive approach to drug crimes has permeated several layers of the EBCN government. The Principal Chief, the Civil Action Team, and also the Attorney General have put forth legislation to make punishments more severe. Surprisingly, a member of the Civil Action team, Lori Taylor, is the only member quoted saying, “Nobody’s ever taken any of the programs that have been started by previous administrations, this administration, and evaluated them” (McKie, Group hopes to break chains of addiction). Yet the Tribe uses the DARE program (Drug Abuse Resistance Education),

which has been independently evaluated numerous times that indicate that the program is not effective over time (West and O'Neal).

### **Economic Development and Gaming**

The Eastern Cherokee have a long history of imposed tourism. The Bureau of Indian Affairs (BIA), the U.S. government, the state of North Carolina, and surrounding county governments and land owners supported an initial call for an expanded tourism-driven economy in the late nineteenth and early twentieth centuries. The 1920s brought the “building of railroads and then surface roads in the area, both before and after the time of the lumber industry; the creation of the Great Smoky Mountains National Park and the Blue Ridge Parkway; and the establishment of businesses by non-Cherokees who wanted to boost their economic base” (C. T. Beard-Moose 23).

By the end of World War II, tourism was expected to increase in the Great Smoky Mountain National Park and nearby Gatlinburg, Tennessee. Some observers saw an opportunity for tourism to show “real” Indian life or better said, pre-removal life. Thus, a tour began through the town of Cherokee which depicted traditional bead work, weaving, canoe making, and arrowhead sharpening, as well as other traditional activities. Conflicting views on the tourism emerged as some recognized the economic value of the increased visitors while others saw the tour as exploitive.

Over the next half a century, the Tribe largely relied on seasonal tourism for economic development. The summer tourists who visited the Great Smokey Mountain National Park and others traveling along I-40 helped to stimulate the economy. In addition, outdoor recreation along water ways brought adventurers from all around. However, the tribe struggled economically, and much of the tribe remained very poor and with few resources. The hotel and entertainment industry sought to draw more people year round.



The opening of Harrah's Cherokee Casino occurred in 1997, through a partnership with Caesars Entertainment and a compact with the state of North Carolina. The Class III gaming provision was established through the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. 2701 et seq., which authorizes that a Tribal-State Compact may be negotiated with the rules, regulations, and conditions as permitted by the Act.<sup>5</sup> The Tribe has the license to regulate gaming activity including raffles,<sup>5</sup> video games,<sup>5</sup> and live table gaming.<sup>6</sup> The compact is to be mutually beneficial for both the Eastern Cherokee Nation and the State of North Carolina. As per the compact (Section 4.1 Exclusivity and Revenue Sharing Provision (B)(1),

Every month, the Tribe shall make a contribution to all Local School Administrative Units and Charter schools within the state of North Carolina on an average daily membership basis, the amount of which shall be calculated in accordance with the formula below, to be spent solely for the purpose of educating children in the classroom... by taking the following percentages of Gross Revenue from Live Table Gaming:

FOUR PERCENT (4%) for the first five years of the Compact:  
FIVE PERCENT (5%) for the next five years of the Compact:  
SIX PERCENT (6%) for the next five years of the Compact:  
SEVEN PERCENT (7%) for the next five years of the Compact:  
EIGHT PERCENT (8%) for the next five years of the Compact. (The First Amended & Restate Tribal- State Compact)

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<sup>5</sup> Section 3. Definitions. For purposes for this Compact (Y) "Raffles" means games in which a cash prize with a value of not more than \$50,000 or a merchandise prize with a value of not more than \$50,000 is won by the random selection of the name or number of one or more persons who have entries in the game.

<sup>5</sup> Section 3. Definitions. For purposes for this Compact (DD) "Video Game" means any electronic video game or amusement device that allows a player to play a game of amusement involving the use of skill or dexterity...

<sup>6</sup> Section 3. Definitions. For purposes for this Compact (Q) "Live Table Gaming" means games that utilize real (non-electronic) cards, dice, chips and equipment in the play and operation of the game.

In 1988, when the Indian Gaming Regulatory Act (IGRA) was passed by Congress, the EBCN set its sights on participating in the casino venture, and Harrah's Cherokee Casino opened in 1997. The IGRA established three "classes" of gaming, I, II, and III:

- Class I is defined as gaming that is part of tribal tradition and ceremonies and social gaming with payouts of minimal prizes. Tribal governments are to regulate these types of activities and they are not subject to follow IGRA requirements;
- Class II involves games of chance such as bingo, non-banked card games which are games played against other players and not the house acting as a bank. This class permits tribes to authorize and regulate this type of gaming, so long as the Tribal government has a gaming ordinance approved by the National Indian Gaming Commission;
- Class III gaming encompasses a broad definition to include all types of gaming not specified in class I or II. The types of games are commonly slot machines, blackjack, craps, and roulette. Any kinds of games that include wagering would be included in class III. This type of gaming must be: a) permitted in the state where the tribe is located; b) must include a Tribal-State compact approved by the Secretary of the Interior; and c) the Tribe must have a gaming ordinance approved.  
(National Indian Gaming Commission)

The federal government retains significant regulatory power over gaming which includes: a) the power to approve Tribal-State compacts, b) the power to approve

management contracts, c) and the power to approve the Tribal ordinance that permits gaming. Furthermore, the Federal Bureau of Investigation (FBI) provides federal criminal jurisdiction over Indian gaming, which supersedes that of gaming establishments that are located within tribes where states provide criminal jurisdiction.

The Class III gaming provision was established through the Indian Gaming Regulatory Act of 1988, which enabled gaming on tribal land and provided the development of a tribal-state compact. Beginning in 1997, the tribe has been involved in gaming with two facilities located in the Qualla Boundary. As a result, millions of dollars have poured into the tribe each year, with each member receiving a percentage of these earnings. Not everyone was on board with legalized gambling at its inception. Concerns focused on potential negative impact of the introduction of gambling that was speculated to exacerbate the alcohol and crime problems within the community. Today there are few complaints from tribe members; the majority involve members asking for more in dividends.

In a typical year, 3.5 million visitors will spend nearly a half-billion dollars on games including slots, cards, and dice. Half of all revenue goes to support the tribal council, tribe operations and infrastructure. The other portion is allocated equally among the 14,000-15,000 members. Each member has been receiving more than \$9,000 per year recently (Sisk). Children are given a full share as well, but this money is invested until they reach adulthood, and then recipients undergo financial management training before receiving their payout.

As part of the tribe's expansion into a second gaming facility, it has a new hospital under construction. With the introduction of the new casino in Murphy, the

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tribe will be supporting 5,500 jobs (Sisk). Initially, gaming was designed to facilitate improved public health for the tribe, which was previously managed by Department of Health and Human Services and Indian Health Services. However, with new revenue the EBCI will be taking over its own health delivery in an \$80 million dollar, 155,000 square-foot hospital (Sisk). The tribe will begin accepting Medicaid and N.C. Health Choice (which covers low-income children), and will provide other social services to members. Prior to this new medical facility, the tribe opened an urgent care facility, a dialysis center, a diabetes clinic, an eye clinic, and a \$13-million-dollar residential treatment facility (Sisk). The tribe boasts recover-support housing, an outpatient care counseling center, and free services for elders.

The revenue is not just making an appearance in brick and mortar facilities. In addition, since the yearly dividends began, the number of Cherokee children living in poverty has declined significantly, as have behavioral issues (Sisk). High school graduation rates have improved, and minor crime convictions have decreased. The expanded health facilities have produced favorable health outcomes as well, with members' blood pressure and cholesterol improving and cancer screenings increasing. The investment in health facilities also has a net benefit in cost reduction as an investment in preventive and primary care helps to treat health needs before they become life threatening and expensive to treat. However, the tribe recognizes the need to diversify the economy and have been looking for ways to draw more tourism for family oriented activities.

Around the country, tribes wishing to expand into gaming continue to receive push back. The belief remains that crime will increase and that the net benefit to the tribe will be negative. Yet the data seems to prove otherwise. Lynne Harlan of the Tribe's Government Relations Office remained confident that the increase in petty crime

and other nuisances was consistent in its proportionality to the number of people moving through the Qualla Boundary. In other words, yes, crime and some of the negative results of gaming expansion have been found on the tribe particularly when it comes to alcohol and traffic violations, but this does not exceed the normal rates of increase as are affiliated with the rise in visitors (Harlan). The oppositional sentiments are largely rooted in fear surrounding a “vice” industry; one that is not universally accepted to be acknowledged as appropriate behavior. The friction created by attempting to change the status quo to allow gaming, made those who viewed the activity as destructive or immoral substantiate their claims against the counter argument of money. The cost-benefit analysis conducted for the Eastern Cherokee washed away the sentiments of immorality and is still seem as an overwhelmingly positive asset for the tribe, even if crime, traffic violations, and congestion have increased.

## **Prohibition and Regulation of Marijuana**

### **A Brief History of Marijuana Prohibition**

The drug prohibition era began with the Harrison Narcotics Tax Act of 1914, which began government regulation of domestic production and international importation of opium and other narcotics. The Act featured the incorrect inclusion of cocaine as a narcotic. Although marijuana was not included in this legislation, the Act built the framework for future drug regulation. The word “marijuana” [also seen as marihuana or maria- juana] became popular during the early 1930s as an alternative name for the more commonly referenced “hemp” or “cannabis.” The term is largely

attributed to newspaper publisher William Randolph Hearst's (1863 – 1951) articles that sensationalized cannabis through accounts of United States – Mexican border violence.

Along with the prohibitionist sentiments spread in Hearst's papers, the United States Federal Bureau of Narcotics Commissioner, Harry Anslinger (1892 – 1975) is credited as the main architect of cannabis prohibition beginning in the 1930s. The Bureau of Narcotics, which Anslinger directed, urged federal policy action on marijuana. As a result, 48 states enacted marijuana regulations in 1936, and new drugs such as aspirin and morphine began to replace marijuana in Western medicine.

*Reefer Madness*, the iconic 1936 drug prohibition film, warned parents about the dangers of drug consumption among young people. Although marijuana was not yet federally illegal, the film projected it as immoral and dangerous. Marijuana came under further scrutiny after the formulation of the Marijuana Tax Act of 1937. Dr. William C. Woodward of the American Medical Association condemned the Act for the misnomer “marijuana” in place of the scientific term cannabis, and for the impending research barriers that the Act created for future investigation of the benefits of cannabis. Dr. Woodward stated before the House of Representatives Committee on Ways and Means:

There is nothing in the medicinal use of Cannabis that has any relation to Cannabis addiction. I use the word ‘Cannabis’ in preference to the word ‘marihuana’, because Cannabis is the correct term for describing the plant and its products. The term ‘marihuana’ is a mongrel word that has crept into this country over the Mexican border and has no general meaning, except as it relates to the use of Cannabis preparations for smoking. It is not recognized in medicine, and I might say that it is hardly recognized even in the Treasury Department. (DrW)

Over the next two decades, the United States continued to escalate penalties for marijuana possession with the Boggs Act of 1951 and the Narcotics Control Act of 1956. In 1963, Israeli scientist Dr. Raphael Mechoulam (1930 – Present) discovered the structure of cannabidiol (CBD), a prominent cannabinoid in marijuana. Then in 1964, Dr. Mechoulam discovered the psychoactive component of the plant, delta-9-tetrahydrocannabinol (THC). The findings sparked new debate internationally on the medical efficacy of marijuana which had been long since dismissed. However, in 1970 Congress passed the Comprehensive Drug Abuse Prevention and Control Act, best known as the Controlled Substances Act (CSA). The Act contained a five tier scheduling system on which marijuana, and by extension medical marijuana, was classified as a Schedule I substance. It remains classified as such to this day. The Act stated that marijuana has: “...high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision” (*Comprehensive Drug Abuse Prevention and Control Act of 1970*, 1247).

Contrary to the CSA, legal use of medical marijuana in the United States was permitted for Robert Randall (1948 – Present), who received an exemption from the law to treat his glaucoma in *United States v. Randall* (1976). Randall’s medical marijuana approval led to the development of the Investigative New Drug (IND) program, which managed marijuana cultivated by the National Institute of Drug Abuse at the University of Mississippi beginning in 1978. Although IND was terminated in 1992, the 13 IND patients continue to receive monthly shipments of federally grown marijuana. The National Institute of Cancer later began researching marijuana and THC, which led to the synthetic production of THC in 1985 known as Marinol. The antiemetic drug is prescribed for nausea and vomiting affiliated with cancer, anoxia, and AIDS.

The Nixon administration formed the Drug Enforcement Administration in 1973 to combat domestic and international drug trafficking. The DEA continues to play a large role in international interdiction efforts, but has more recently been limited in its marijuana prohibition enforcement. The Rohrabacher-Farr Medical Marijuana Act was an amendment passed in December of 2014 as part of a \$1.1 trillion spending bill that denies funding to the DOJ for preventing the implementation of state law that authorizes the use, distribution, possession, or cultivation of medical marijuana.

In 2010, the DOJ issued the Wilkinson Memorandum, which ended the exclusion of veterans who participate in state medical marijuana programs from veteran's benefits. Next, in 2013 the Cole Memorandum published declared that the federal government would not challenge state marijuana laws if they did not threaten public safety. Additionally, in 2014, the DOJ released an almost identical memorandum that outlined the provisions required for Native American tribes to pursue marijuana policy reform without federal interdiction. In the same year, the 113<sup>th</sup> Congress denied federal funds to combat legal marijuana operations in states with marijuana reform through H.R. 83 and became Pub.L. 113-235.

After many years of discussion, along with several states implementing new marijuana programs, a long standing barrier for marijuana research was lifted when the Public Health Service review procedure, applicable only to marijuana, was removed by the Department of Health and Human Services. The changes have opened new opportunities for clinical studies which are slowly becoming approved. In April 2016, the first DEA approved study was formally announced. The non-profit, Multidisciplinary Association for Psychedelic Studies, was approved to conduct the first clinical trial on the randomized, blind, placebo-controlled study on marijuana as a treatment for posttraumatic stress disorder in veterans. The research is funded by a



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\$2.156-million-dollar grant that was awarded in 2014 by the Colorado Department of Public Health and Environment, but has been stalemated by the necessary DEA approval until the April 2016 approval release (Burge). The changes come following years of stalemate and inaction federally. The gradual lifting of anti-marijuana evidence come after 24 states have medical marijuana provisions and numerous states continue to put forth voter initiative referendums. The tipping point has been reached, marijuana policy reform is moving.

### **Incarceration and Law Enforcement**

Issues with transparency have made it difficult to find operating expenses and budgeting information for the EBCN Tribe's law enforcement and administrative costs affiliated with drug crimes. Aggregate data is available for expenses and costs for tribal operations. However, due to the variability in tribe size, relationships with surrounding counties, etc. the data are inconclusive. In 2012, North Carolina as a whole had 42,130 drug law violation arrests (State Bureau of Investigation). In 2010 the state had 20,983 marijuana arrests, which cost the state \$55 million in enforcement (American Civil Liberties Union). According to the North Carolina, Cherokee Police Department website, the department employs 65 people; 60 of whom are sworn police officers. The jurisdiction includes 53,000 acres of land and services a population of 55,000 people. In 2014, the Tribe completed the EBCI Justice Center, a 76,000 square foot facility with a 96-bed jail, Cherokee Tribal court and offices, and the Cherokee Police Department (McKie). The facility cost came to a total of \$26 million; of which \$18 million came from the DOJ.

The Drug Enforcement Unit for the EBCN has three detectives that work on narcotics related cases. According to the North Carolina, Cherokee Police Department website, the unit comprises of the Cherokee Indian Police Department, the Swain Co.

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Sheriff Department, Jackson Co. Sheriff Department, Cherokee Co. Sheriff Department, Graham Co. Sheriff Department, and the National Park Service. The Unit works on “local possession, sales, and trafficking cases, the task force works on larger Federal conspiracy and drug-trafficking cases that occur in Western North Carolina” (Eastern Cherokee Police).

EBCN Councilmember Teresa McCoy proposed a new banishment provision in late 2015 for those selling or trafficking drugs. The banishment would apply to both members and non-members of the tribe. However, few supported this punitive measure. Many agreed that directing attention to traffickers of drugs was the right move rather than those who purchase or suffer from dependency, but many were weary of stripping EBCN members of their identity. With a lack of support for a banishment of tribal members, support has grown for a proposal to improve the tribe’s drug treatment, rehab, and transition program. Many members agree that trafficking and other unregulated activity is causing harm to the community, but disagreement has emerged over how to overcome the challenges (Kays).

## **The New Potential in Marijuana**

### **Economic**

Jobs and opportunities created by a regulated marijuana industry are numerous. The industry requires participation from numerous sectors of the economy including construction, real estate, IT, accounting, administration, business development, medical staff, and customer service. In Colorado those working in the retail marijuana industry are required to hold a license called the “Retail Marijuana Occupational License,” which requires holders to pay \$150, be at least 21 years of age, hold residency in the state of Colorado, be free of a felony Controlled Substance conviction within the previous 10 years, and be employed outside law enforcement and state or local government

(Colorado Department of Revenue). As of June 2014, over 21,000 people had received Medical Marijuana Occupational Licenses (Colorado Department of Revenue).

Although California lacks a legal, adult-use program, the industry is gearing up for rapid expansion, as it seeks to take lessons from the successful wine industry. One report states: “according to the Wine Institute, California’s wine industry had \$12.3 billion in retail sales in 2008 and that generated \$51.8 billion in economic activity, including 309,000 jobs, \$10.1 billion in wages, and \$2 billion in tourist expenditures” (Rendon 231). However, the legal marijuana industry is estimated to be about 30 percent of the size of the wine business. Yet the legal market could bring in anywhere between \$12 and \$18 billion in economic activity, 60,000 to 100,000 jobs, and \$2.5 to \$3.5 billion in wages (Rendon 231-232).

The EBCI have an infrastructure that can be built upon for legalized cannabis. According to the Tribe’s economic development website, there are 3.6 million annual visitors to Cherokee to visit Harrah’s Casino. The Casino pays no county property taxes, provides up to a \$20,000 tax credit for each Native American employer, and attracts an estimated \$156.6 million in tourist spending each year (Development). It is difficult to predict the economic impact of legal marijuana on revenues, wages, and job creation, but the existing infrastructure of two Harrah’s Casinos presents an opportunity to build upon the tourist culture in the adult-use marijuana industry.

The Tribe, at least from the perspective of its public websites, appears to be actively working to foster economic development in the area that includes industries other than casinos. The largest of these proposals is that for a \$92 million water/adventure park that was first proposed in 2012, but taken off the table due to the expansion of the Cherokee Indian Hospital project (McKie). Looking to capitalize on family fun seems to be at least a diversified way to bring in revenue. The question of

whether or not the facility would be profitable is contested. Although no vocal opponents have come out against the pursuit of this project, there seems to be stalling on behalf of the Tribal Council even with the idea of eco-tourism and renewing the Eastern Cherokee Nation as a family destination. Perhaps this is due to the looming potential of a new multi-billion dollar legalized marijuana industry sweeping across the nation.

The expansion into the marijuana industry for the EBCN is a very viable option for the diversification of the local manufacturing, tourism, agriculture, and medical sectors. Should the Tribe begin to investigate medical marijuana as an industry, this could lead to the infrastructure investment and regulatory procedure changes for members of the community. This would be necessary before fully committing to making tribal land a recreational retail location. For the purposes of economic development, if the Tribe were to legalize medical marijuana, there currently exists a population of 14,000 members of whom only a small portion would qualify as medical patients, depending on the kinds of conditions eligible. Additionally, numerous other regulatory decisions remain for the implementation of medical marijuana.

If 10 percent of the EBCN members were eligible for medical marijuana based on the enumerated medical conditions that would be outlined within the program, 140 people would seek to purchase legal, medical marijuana. In order to supply patients with an ounce of medical marijuana per month – some states permit more – a total of 140 plants would need to be harvested per month at the minimum. With such a small number of patients to serve with medical need, the infrastructure for a retail dispensary of marijuana would likely be unnecessary. However, in-home cultivation or cultivation by a patient's caregiver might be likely.

*Medical Externalities*

The American Public Health Association (APHA) has called for the regulation of commercially legalized marijuana. Specifically, it has called for the introduction of warning labels. In one of its publications, the group states:

Marijuana products could also be labeled to warn consumers of health risks. Tobacco products in the United States must display the surgeon general's warning about the risk of tobacco use. Labels on alcohol must also contain a specific warning about health risks. While research has shown little effect on drinking behavior from alcohol labels, tobacco labeling's impact on consumer attitudes and behaviors is more apparent" (American Public Health Association).

Beyond the call for labels for commercially sold marijuana, APHA also advocates the "development and availability of linguistically competent educational and informational materials for individuals with limited English proficiency" (American Public Health Association). Many of the regulations following recommendations from APHA and other leaders are being handled on the local level through compliance implementation. In Colorado, for example, new policies regarding quality control and access emerge almost daily. Many of these policies are incredibly beneficial for medical patients.

Additionally, vast resources are being dedicated in marijuana policy reform states that seek to provide recommendation guidelines for medical professionals. It is important to note that medical professionals cannot "prescribe" marijuana to medical patients. Rather, they must "recommend" the product to their patients. The variability in knowledge on behalf of these medical providers is difficult to determine. Especially with so few clinical trials comparing quantity, method, and quality of product

consumption for specified medical ailments, medical providers are relying on staff at dispensaries and those engaged in marijuana usage to help guide their patients into a product that works best for them. There is no doubt that more research and standardization of practice is needed to better prepare medical providers to direct their patients and for patients to understand all of their options before pursuing marijuana as a treatment. The benefits of creating a legal market for marijuana include better treatment options, more scientific research, and better education for patients and providers.

One of the externalities found in states with medical marijuana has been the decrease in deaths attributed to opiate overdose. States with medical marijuana laws on average had 24.8 percent lower averages in opioid overdose compared to states without medical marijuana laws (Bacchuber, M.D. and Delach). In thinking about the medical implications of marijuana policy reform, it is important to note the kinds of externalities that lie outside the direct patient or medical ailment benefit. Because the Appalachian region is known for high rates of opiate related overdoses, the introduction of a medical marijuana program for the EBCN and the region more generally could create positive outcomes in the number of lives saved from overdoses. The problem has escalated to such a degree that Kentucky, West Virginia and North Carolina have begun implementing new policy measures to try to save lives of those opiate users. It appears as though medical marijuana could hold some benefit in these states.

### *Social Programs*

Colorado has realized numerous positive externalities through adult-use and medical marijuana legalization. After one year, for example, the state allocated more than \$8 million in retail marijuana tax revenue to youth prevention, education, mental

health, and community-based development programs (Steadman). Moreover, the state allocated \$2.5 million to fund health workers in Colorado schools, and \$2 million to fund community-based youth service programs that offer mentoring and focus on drug prevention and school retention. The state also allocated over \$4.3 million to fund school-based outreach programs for students using marijuana in 2015 (Steadman).

The EBCN understands the importance of investing in education and has successfully contributed millions to encourage high school achievement, capital project improvement and recreational activities. In 2011, the funded \$130 million new school for k-12 that includes a 3,000-seat football stadium and and \$4.1 million youth center (Frank and Rothacker). Because the tribe is already actively investing in educational opportunities for youth, unlike other communities that can only dream and beg for funding capital projects and upgrades, the EBCN is realizing these improvements. With marijuana policy forms the educational benefits can take various forms: fewer students leaving high school or college with marijuana records, increased funding potential through marijuana regulation taxes, and industry economic development contributing to funding pools.

However, any number of possibilities could exist for the allocation of tax revenue and savings should marijuana policy be implemented. Education is a desirable recipient for the new allocation because generally education needs increased funding sources and support. The other areas that could benefit from the savings and revenue are almost innumerable, but could include road maintenance, social service support, wildlife and environment preservation, and improvements for capital projects. The savings and stimulus created will require careful inspection of the Tribal Council just as has been done with gaming revenue.

## Achieving Legalization

As the EBCN continues to consider marijuana legislation along the spectrum of options available, it is important to note the current legal and social challenges that remain in realizing these policy changes. The bottom line remains that changing marijuana laws requires changes to existing statutes and ordinances, compliance by law enforcement authorities, and autonomy from the federal government. In considering these challenges, the legal precedent for policies, the external and internal governmental influences and the kinds of reforms being proposed are fluid and complex barriers to real change. Perhaps the one consideration that is not easily rationalized is timing. Knowing how, when, to what extent, and with whom to push reforms is quite possibly the most difficult thing to navigate. However, legal precedent, political challenges, and landscape of legalization require the most immediate attention in the larger context of appropriate timing.

### Legal Precedent

Arguably the most important document guiding the legalization of marijuana is the Cole Memorandum. The letter, released by Deputy Attorney General, James M. Cole, outlines the Justice Department's concern for marijuana policy change. In summary, the document describes the federal government's non-action towards jurisdictions and specifically, states, in the enforcement of the Controlled Substances Act. Released in August of 2013, the memo came months after Colorado began recreational marijuana sales on January 1, 2014. The memo outlines that the states must have strong regulatory controls and ensure that the following eight priorities are enforced:

- Preventing the distribution of marijuana to minors;



- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property. (The Office of the Deputy Attorney General)

The Justice Department drafted a separate policy statement on marijuana for issues in Indian Country in October of 2014. The memo is essentially identical to the Cole Memorandum except with the inserted language regarding Native American land. The Justice Department published on their Frequently Asked Questions page a response to the question, “What prompted the Justice Department to issue a separate policy statement on marijuana issues in Indian Country?” They replied:

A number of tribes have raised concerns that state legalization of marijuana may have negative public safety impacts in their communities,

many of which suffer disproportionately from juvenile and adult substance abuse, illegal cultivation of marijuana on tribal lands, as well as gang and organized crime activity associated with the drug trade. The policy statement was drafted to give United States Attorneys and Tribal governments greater clarity on how the federal government would interact with them to address these and other issues. (U.S. Justice Department)

The statements released by the federal government thus substantiate that Native American tribes have the ability to regulate the sale, manufacture, and distribution of any kind of marijuana so long as they meet the above guidelines. Yet we continue to see only tribes within states with legalized marijuana successfully implement their own policy reforms. At the time of this thesis in Spring of 2016, only two tribes have successfully begun full retail sales of marijuana, both in Washington state. As I will discuss in the next section, there have been other tribes that have unsuccessfully attempted to implement new marijuana operations, only to be raided or threatened with federal seizures.

Medical marijuana has been accessible for tribe members whose reservation land resides within one of the 24 states with medical marijuana legalized. However, due to complete ideological opposition or non-interest in marijuana legalization, 566 tribes remain without reformed marijuana access. Granted, there are tribes across the United States that have been engaged in hemp cultivation and decriminalization efforts previously, but none have successfully opened and maintained recreational or medical marijuana storefronts outside of Washington state.

## Legislation

One of the most persuasive arguments against marijuana reform on Native American land is the fear of funding cuts from federal appropriations. Although this has not been seen to have happened in states with medical and adult-use marijuana, the long history of injustice towards Native Americans establishes an often convincing argument. The fears of funding cuts are both real and also diminishing. New efforts to de-fund federal marijuana interference seems to be gaining some traction. However, the discretion of departments such as the Department of Agriculture or the Bureau of Indian Affairs hold power in policy implementation which can direct more nuanced interpretations of a piece of legislation that excludes individuals or communities from certain financial or other related benefit should they involve themselves with any kind of marijuana reform. Legislative efforts addressing civil asset forfeiture are also looking to address another concerning practice by the DEA and local police departments – land seizures and forfeiture of property to pay for domestic marijuana eradication programs.

Bills that have addressed these policy changes include the “Stop Civil Asset Forfeiture Funding for Marijuana Suppression Act” introduced by Rep. Ted Lieu (D-CA) and Rep. Justin Amash (R-MI) introduced and passed in the 114<sup>th</sup> Congress. Banning of federal interference in state managed medical marijuana programs was introduced and passed by a host of bi-partisan Representatives from California, Kentucky, Nevada, Tennessee, Colorado and Wisconsin which added the provision to an annual spending bill in 2015. The \$23 million that this amendment cut from the DEA budget was shifting to fight child abuse, process rape kits and pay for body cameras (Drug Policy Alliance).

The most recent effort to protect marijuana policy change has been introduced by Rep. Mark Pocan (D-WI) called the “Tribal Marijuana Sovereignty Act” which “prohibits federal agencies from considering a tribe’s marijuana policy when disbursing federal dollars to sovereign tribes” ( (Mark Pocan 2nd District of Wisconsin ). The legislation is a direct response to the marijuana raid conducted on the Menominee Tribe located in Wisconsin that took place in July of 2015 (See *Discriminatory Policies*). A directive was released by the United States Department of Agriculture to prohibit any of the 2014 Farm Bill allocations to be granted to agricultural producers who cultivate marijuana, even if it is legal under state law. Because there are numerous tribes that are dependent on federal assistance, these new directives or memos released by agencies to re-define the scope of their allocations are the most dangerous and costliest for tribes. Additionally, this bill seeks to reform the guidelines for the Indian Health Service to allow medical practitioners to discuss marijuana as a treatment for their patients. Lastly, it seeks to ensure that tribal members will not be excluded or evicted from Indian Housing should the individual living there be found to possess small quantities of marijuana.

The Eastern Cherokee have taken note of these shifting policies and have proceeded in pushing new legislation forward. Although the Resolution 40 which sought to conduct a study on medical and adult use cannabis on the tribe has failed, the newest piece of legislation that instructs the Attorney General to draft an ordinance permitting the regulation and distribution of the medicine. Although Chief Patrick Lambert could veto this legislation, he has publicly come out in favor or at least non-opposition towards medical marijuana reform. It is important to note that Chief Patrick Lambert, before becoming Chief, was the head of the Tribal Gaming Commission for 22 years. He understands the process of developing an industry and could be an ally in the

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foundational growth of a medical marijuana program that he has already addressed interest in exploring.

The resolution titled Medical Cannabis Resolution (whose number is still missing from the Tribal Council website) was unanimously passed on May 5, 2016 and called for the Attorney General to work with Common Sense Cannabis group members to put forth a plan based on comparisons between currently operating medical marijuana programs over the next six months. Should the Principal Chief choose to support this legislation, it will no longer be a question of *if* medical marijuana comes to the tribe, but rather *how soon*.

### **Geographical Challenges for the Eastern Cherokee**

The nearby states of Tennessee, South Carolina, West Virginia, and Georgia have a vested interest in the commerce and activity taking place in the Western part of North Carolina. If marijuana is legalized, the tribe must avoid a situation similar to that taking place today in the Midwest, as the states of Nebraska and Oklahoma have taken up legal fights against the Colorado marijuana industry, arguing that state-legalized marijuana is spilling over state lines and causing crime. The real grievances of Oklahoma and Nebraska lie in the financial burden they are taking on by pursuing increased interdictions for cross- state legal purchases of marijuana in Colorado (*States of Nebraska and Oklahoma v. State of Colorado*). Thus, Attorney Generals from the two states sought for the Supreme Court to apply “original jurisdiction” and hear the dispute between the states.

However, on March 21, 2016 the Supreme Court declined to hear the case. The Court did not explain its refusal to hear the case, but the dissents of both Justices Clarence Thomas and Samuel A. Alito Jr., argued that the sovereign interests of the states were at question and that significant harm was being inflicted upon one state by

another. The ramifications for this decision are many, as states or tribes interested in policy reform which had potential to be thwarted by neighbors is now a non-issue. Moving forward with reform efforts is now the responsibility of the entity wishing to change laws, as delaying policy reform due to fear of retaliation from neighboring states makes little sense.

With the DOJ policy memo and the dismissal of the *States of Nebraska and Oklahoma v. State of Colorado* case, tribes theoretically now have the legal right to pursue marijuana reform. However, the reality is that self-determination and tribal autonomy are complicated by the state/tribal relations. The underlying and historic subordination of tribal government to that of the states creates a dynamic in which tribes are subject to tense relations with the states should they upset the status quo of an already complicated relationship. Tribes have equally as complex partnerships with the federal government as do the states. For example, states that have legalized have risked losing federal funding for any number of projects or programs, but the threats thus far have proven to be unsubstantiated.

Because the federal government threatened retaliation against states at the inception of marijuana reform, the tribes fear loss of support from the states. The loss of support would be less from a funding perspective and more in terms of the relationship that the tribes often have with states regarding institutional support such as regulatory oversight in areas such as health and worker safety. Moreover, the compacts that tribes hold with states regarding gaming could also see changes that jeopardize the industry and investment that the tribes have already established. How those changes would manifest is still largely unknown, but compacts between states and tribes determine tax policy, revenue allocation, and resource management between the two entities. The feared retaliation, either real or imaginary, could spur detrimental relations between

tribes and state governments. Any number of changes could In a slew of interdictions of Native American marijuana reform efforts, the present fear of retaliation does have recent historical reasoning.

### Discriminatory Policies

In 2015, several raids of Native American tribes took place after the Drug Enforcement Agency received warrants from federal judges. For example, in Menominee County, Wisconsin the Menominee Tribe had 30,000 plants seized during a raid in July of 2015 (Wainscott). The tribe claims that the plants were all low- THC and were to be used for industrial hemp, but the DEA suspected that non-hemp strains were also growing on the property. Although no arrests were made because the Menominee Tribe was acting legally under the 2014 Farm Bill provisions for industrial hemp cultivation in conjunction with the College of Menominee Nation, the agencies destroyed the operation. According to Sec. 539 of H.R. 83, the federal budget bill for 2015, “None of the funds made available by this Act may be used in contravention of section 7606 (‘Legitimacy of Industrial Hemp Research’) of the Agricultural Act of 2014 (Public Law 113-79) by the Department of Justice of the Drug Enforcement Administration (US Congress)”.

Danny Federhofer of Flying Eagle Advisors--“a strategic team of advisors, partners, and alliances in the cannabis industry”—has stated that the raid was a failure of the tribe. Federhofer noted that the (Menominee) tribe lacked internal regulatory requirements (as described in the Cole and Wilkinson memoranda) for instituting a legislative or democratic framework surrounding their cultivation efforts. Thus, in lacking the appropriate regulatory infrastructure that states with medical marijuana and adult-use have worked to implement over many years, the tribe was vulnerable

and insufficiently able to rely on the farm bill provisions to save them. Moreover, although difficult to verify, Federhofer claims that the marijuana grown on the Menominee Tribe was not hemp and had elevated levels of THC (Federhofer). In any case, the raid demonstrates that tribes must establish formalized procedures and regulatory structures for marijuana cultivation if they are to succeed in their efforts to legalize marijuana. The facts surrounding the levels of the THC in the crop are only speculative and therefore, it is to be assumed that the Tribe was cultivating a crop in line with the provisions of the farm bill which permit the cultivation for industrial and agricultural use.

In August 2015, the Menominee Tribe held a two-question referendum for its 9,000 tribal members regarding the legalization of medical or adult-use marijuana. The members overwhelmingly supported the initiatives, with 58 percent voting for adult-use and 77 percent voting for medicinal legalization (Wainscott). Yet only 13 percent of the Tribe voted in the election. Tribal leaders after the referendum conducted an investigation on the proposed changes and voted as a tribal council to pursue a tribe-supported operation. It appears that the process implemented by the Menominee Tribe was similar to others initiated in states across the country.

The raid conducted on the Menominee Nation is a clear example of a discriminatory policy that challenges tribal sovereignty and violates federal policy on hemp interdiction. What remains to be resolved in court is the interpretation of “state” within the farm bill and hemp cultivation. The October 28, 2014 Wilkinson Memorandum titled “Policy Statement Regarding Marijuana Issues in Indian Country,” states that Native American Tribal and Reservation land traverses state lines and operates in a sovereign manner like state territory does. Thus, the Wilkinson Memorandum guides the prioritization of marijuana enforcement in the districts



granted that the eight areas of concern in the cultivation, distribution, and consumption of marijuana just as its counterpart, the Cole Memorandum, has developed for state marijuana laws.

Because the Menominee Tribe claimed to be cultivating hemp, which is permitted by the 2014 reauthorization of the farm bill (section 7606), the raids conducted on the tribe are being framed as a violation of the farm bill provisions with excessive THC content rather than a blatant act of illegal marijuana cultivation. Yet the rationale for the raid seems questionable due to the illegality of hemp and any form of marijuana cultivation in the state of Wisconsin. Thus, any activity involving hemp or medical or recreational marijuana would likely raise red flags for state leaders and law enforcement.

However, the Menominee Tribe and others are sovereign and independent nations whose autonomy should not be limited by state authorizations. Whether or not the THC content of the plant was above the industrial hemp limit (0.3%- 1.5% THC), it appears that the formal process that the Menominee Tribe completed should have been sufficient in protecting their crop. The Tribe continues to use the violation of the farm bill provision against the DEA in the lawsuit filed in 2015 for the seizure of the crop.

The Attorney General of Wisconsin, Brad Schimel, has noted that the state of Wisconsin lacks any authority to criminalize activity on the Menominee Reservation. But on the other 10 tribal lands, the state does have jurisdiction for reasons not immediately apparent. Schimel noted that he is “not supportive of (tribes) growing marijuana,” but has publicly recognized the benefit of reduced criminal penalties for first time offenders and young people (Spivak).

## **Building Community Support**

The interest in the consideration of some kind of marijuana reform on the EBCN is evident after the unanimous approval of Resolution 40 in the Tribal Council. In response to the veto of that same resolution, demonstrates that political pressure and overcoming social norms still largely exist within the tribe. Common Sense Cannabis has put forth new legislation in early 2016 that seeks to play to the strongest sentiments of the tribe, marijuana for medicinal use. The biggest opponents of the legislation seem to be the Principal Chief, the District Attorney, and the Police Department, which have collaborated on legislation that moves away from that of other communities that have implemented policies to try to combat drug related problems that leverage non-punitive approaches. Groups such as the Civil Action Team which is working to combat drug related issues on the tribe appear to share some perspectives with current Tribe leadership.

Already, the EBCN Common Sense Cannabis group has effectively organized themselves to be both effective with the media and within the tribal council. What needs to appear in their statements, appeals, and communication is data surrounding the cultural considerations and public opinion of tribal members. Perhaps they are aware of these considerations and numbers, but no data found during this report indicated a specific study concerning the approval rating of tribe members. The messaging provided by CSC is largely on point with that of other campaigns around the country both in the process of seeking reform and that which has already been achieved.

It is possible that there is a marijuana consulting firm helping to keep the legislation and strategy on message. Utilizing a campaign strategy or organization with experience in the field will help to overcome some of the challenges of putting forth

legislation in the Tribal Council. This is because members of the CSC can work on relationship building rather than legislative drafting, and thus leverage their community relations to help maximize impact of efforts. The problem, of course, is that funding CSC and any supplemental help takes more than a donation of time, it requires a host of resources that all cost money. How the CSC is funded is not immediately apparent, but it would make sense that individuals or companies interested in marijuana reform on the tribal land would help to sponsor these efforts.

Unfortunately, as with any legislative effort, concessions are made on both the proposed legislation and the side of the implementers. Colorado is seen as the “gold standard” in marijuana policy reform, but even there there are certain restrictions that local businesses and consumers hope to change in the future. The increasing regulated industry is criticized by small business owners and those hoping to get in on the economic action. What is to be avoided is the *overregulation* of the industry to ensure that the unregulated market becomes unrecognizable. With increasingly difficult policies to follow, there will be some new businesses that will fail due to overregulation. Some of the policies include the kind of container each item must be housed in, the hours of operation, the labeling of each product...etc.

The EBCN has the benefit, should it proceed in reforming marijuana policy. The ability to piecemeal their policies based on the best practices taking place around the country is a huge cost saver and will hopefully result in a more functional system. While leveraging their lessons and experience in gaming, it seems as though the EBCN will be well equipped to take on the new industry. In moving forward, the CSC group would benefit from having local endorsements from community members, local businesses, national interest groups such as Students for Sensible Drug Policy, the Drug

Policy Alliance or any other drug policy reform organizations to help mobilize voters and members of the community to support reform efforts.

## **Implementation**

Implementation of marijuana legalization will widely differ among tribes as we have seen occur between states. Without a federal policy change to create standardization in marijuana policies, states and tribes will continue to adopt differing implementation procedures and standards. In the following section, I describe broad categories of reforms that could take place in marijuana policy, but I also present a comparison among states on their versions of marijuana reform. Currently, only in Washington state, where a Tribal-State compact has been utilized, is full legalization permitted on tribal land. Due to the large number of federally recognized tribal lands (326) it is difficult to monitor all of the policies regarding marijuana that have been slowly evolving over the past few years.

The few more recent and high profile cases are isolated examples of marijuana reform that continue to lack the kind of influence that state legalization has accrued. Examples include the previously mentioned Menominee raid, the Pinoleville Pomo seizure, medical marijuana approval for the Seneca Nation of New York which, and an investigation into retail marijuana in Nebraska by the Omaha tribe. The two Washington state tribes that have engaged in Tribal-State compact agreements follow the same regulations as the state-licensed stores, with the same sales taxes as the state. This compact has similarities to other compacts that tribes and states hold including the regulation of gambling, alcohol, and tobacco. Each tribe (the Suquamish and the Squaxin Island) has signed a 10- year contract with the Washington State Liquor and Cannabis Board to maintain the state regulated excise tax of 37 percent. The tax

revenue generated from Native American sold marijuana remains with the tribal governments (Walker).

In other areas of sales such as tobacco, gasoline, and alcohol, some tribes receive tax rebates or exemptions from the state surrounding the tribal land. The tax benefit to tribes has been criticized by those interested in recouping the funds that the state does not receive, and surrounding retailers. Around areas near Native American reservations, many people choose to buy their gas, cigarettes, and alcohol on the tribal land so they avoid the taxes in the surrounding counties. Thus, Washington's coordination between state and tribal governments resulting in a compact for a uniform tax rate maintains consistency across all legal marijuana markets in the state and prevents price competition between tribal and state government sales.

Currently, there are four general categories of marijuana policy reform: taxation and regulation (legalization), decriminalization, medical marijuana, and lowest law enforcement priority (LLEP). No marijuana reform policies have comprehensively remediated unregulated legal markets, as this would be almost impossible given the existing regulatory structures in the United States. Thus, movement toward legal regulation will begin to mitigate the most challenging aspects of the unregulated, criminal market. The regulatory models in the United States vary considerably, but in the following sections the differences between them will be explained for basic comparative purposes.

Any marijuana policy direction that the tribe pursues will require a great deal of implementation protocols such as those adopted by other localities and states that have achieved these reforms. For example, the establishment of a board or governing body to oversee the marijuana policy reform efforts will be critical in monitoring and directing the community reception and interaction with the program. Maryland, for example, has

the Maryland Medical Cannabis Commission, which is governed by 15 serving members. These members consist of medical doctors, pharmacists, public health experts, attorneys, horticulturists among others. The Commission:

...develops policies, procedures and regulations to implement programs that ensure medical cannabis is available to qualifying patients in a safe and effective manner. The Commission oversees all licensing, registration, inspection and testing measures pertaining to Maryland's medical cannabis program and provides relevant program information to patients, physicians, growers, dispensers processors, testing laboratories and caregivers (Maryland Medical Cannabis Commission).

Each state has its own respective governing or advisory board for marijuana regulation, which is critical for the establishment, maintenance, and the procedural development of local policies. The EBCN will be no exception because of the inherent need for a council of this sort and the requirement of the Cole and Ogden Memoranda which require the development and enforcement of local marijuana policies.

### Taxation and regulation

**Taxation and regulation policies** permit marijuana to be legal, but with regulatory control to ensure that suppliers maintain distribution standards that comply with the determined policies and also to ensure that minors are excluded from purchasing product. The regulatory structure here is much like that for alcohol. Although many refer to this as "legalization" or "adult-use," the framework of regulation and taxation are important elements to maintain quality control and

consumer/supplier restrictions.<sup>s</sup> Each state has autonomy in the implementation and policies affiliated with this policy reform which in turn will create what could be huge variety in the kind of legal marijuana businesses within each state (Table 1). In every state that has pursued this policy, the baseline access model for adults follows alcohol, 21 years of age and older.

Currently, four states have implemented regulated and taxed marijuana structures: Alaska, Colorado, Oregon, and Washington. The District of Columbia remains in legal limbo. Marijuana is legal to consume, possess, and cultivate for personal use. However, unlike Alaska, Colorado, Oregon, and Washington, recreational retail facilities are not permitted to operate within D.C. Thus, where and how to purchase marijuana legally remains unstipulated for non-medical users, and as a result an unregulated market for purchasing recreational use marijuana remains active. The manifestation of this has resulted in a quasi-legal set up where the development of legal dispensaries of product are not permitted as are seen in other states with taxed and regulated marijuana.

The benefits of this reform encompass all of the key elements found in decriminalization, medical marijuana, and LLEP. In addition, revenue is produced from a previously unregulated market that begins to leverage what many believe to be the United States' largest cash crop. When implemented with oversight, the unregulated market will eventually become obsolete, and more predictable marijuana strengths and strains will be purchasable. Moreover, resources will be reallocated to target more

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<sup>s</sup> Throughout this paper, when referring to 21 and over marijuana use the terms "recreation", "adult use", or "taxed and regulated" may be used interchangeably. What is most important to note is that this is an entirely legal activity to engage in, so long as the individual is following the local ordinances or laws which dictate the areas permissible for consumption.

serious criminal offenses, and ultimately less crime will take place surrounding marijuana purchases, as consumers and suppliers become safeguarded in the legal market. The balance, of course, is to ensure the proper level of regulation; one that both supports the legal market infrastructure while also ensuring that over-regulation does not drive business back into underground markets.

Table 1. Comparison of legal, regulated marijuana for possession and cultivation.

State	Year Passed	Method	Possession Limits
Alaska	2014	Ballot Measure 3 (52%)	1 oz usable; 6 plants ( 3 mature, 3 immature)
Colorado	2012	Ballot Amendment 64 (55%)	1 oz usable; 6 plants ( 3 mature, 3 immature)
DC	2014	Ballot Measure 71 (70%)	2 oz usable; 6 plants; ( 3 mature, 3 immature)
Oregon	2014	Ballot Measure 91 (56%)	8oz usable in home; 1oz usable outside home; 4 plants
Washington	2012	Ballot Measure 502 (56%)	1 oz usable; no home cultivation

Source: Gottlieb, Miranda. 2016

### Decriminalization

Decriminalization policies generally reduce penalties for first-time possession of small amounts of marijuana for personal, adult-use. Violators may be subject to fines much like those for traffic violations. According to the Students for Sensible Drug Policy, 12 states have adopted decriminalization policies: California, Connecticut, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, Rhode Island, and Vermont (Students for Sensible Drug Policy). These policies reduce the stigma of a criminal record for adults who have non-violent, personal use violations, while also making room for law enforcement to focus on more serious



crimes. The systematic change in law enforcement activity takes a burden off of every affiliated task that is involved with the processing of a marijuana law violator.

## Medical

**Medical marijuana** policies allow for patients to use marijuana for treatment without arrest or imprisonment. Patients who use marijuana are still subject to arrest or incarceration by federal authorities, however, but these interdictions have declined in recent years since the Cole Memorandum. Currently, 23 states and D.C. have adopted medical marijuana legislation: Alaska, Arizona, California, Colorado, Connecticut, D.C., Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. Medical marijuana use has been demonstrated effective in small clinical trials, and many scholars believe that marijuana may someday serve as a replacement for synthetic painkillers.

Healthcare expansion on the EBCN is taking place, as new medical facilities are being built to provide more comprehensive local care. Implementing medical marijuana reform could manifest with incredible variety (Table 2) within the tribe given the vast number of variables to be considered, including whether or not tribal membership is required to receive medical marijuana product. Some of the challenges will be to determine what the process is for medical screening, which medical conditions apply, if there is brick and mortar distribution, and if caregivers can cultivate on behalf of patients.

It seems plausible to speculate that developing medical marijuana dispensaries for a limited number of patients would be an unsustainable business venture for the tribe. Although ventures such as permitting home cultivation (including caregiver

cultivation) would be one of the most conservative routes for the tribe to pursue because it would limit medical tourism and specifically address the health needs on the tribe. It remains to be seen how inclusive the EBCN program will become given the spectrum of models across the country and the largely divided opinions about how to best pursue marijuana policy reform on the tribe. In some markets, average purchases can be \$60 per transaction while in others, closer to \$100. The amount spent varies significantly on the proximity of the business to a big city, possession limits, individual preferences, tax rate, the size of the caregiver market, and prices (Olson).

Table 2. Description of the method of medical marijuana policy change and the basic possession or cultivation limits.

State	MM Passed	Method	MM Possession Limits
Alaska	1998	Ballot Measure 8 (58%)	1 oz usable; 6 plants (3 mature, 3 immature)
Arizona	2010	Proposition 203 (50.13%)	2.5 oz usable; 0-12 plants
California	1996	Proposition 215 (56%)	8 oz usable; 6 mature or 12 immature plants
Colorado	2000	Ballot Amendment 20 (54%)	2 oz usable; 6 plants (3 mature, 3 immature)
Connecticut	2012	House Bill 5389 (96-51 H, 21-13 S)	One-month supply (exact amount to be determined)
DC	2010	Amendment Act B18-622 (13-0 vote)	2 oz dried; limits on other forms to be determined
Delaware	2011	Senate Bill 17 (27-14 H, 17-4 S)	6 oz usable
Hawaii	2000	Senate Bill 862 (32-18 H; 13-12 S)	4 oz usable; 7 plants
Illinois	2013	House Bill 1 (61-57 H; 35-21 S)	2.5 ounces of usable cannabis during a period of 14 days
Maine	1999	Ballot Question 2 (61%)	2.5 oz usable; 6 plants
Maryland	2014	House Bill 881 (125-11 H; 44-2 S)	30-day supply, amount to be determined
Massachusetts	2012	Ballot Question 3 (63%)	60-day supply for personal medical use

Michigan	2008	Proposal 1 (63%)	2.5 oz usable; 12 plants
Minnesota	2014	Senate Bill 2470 (46-16 S; 89-40 H)	30-day supply of non-smokable marijuana
Montana	2004	Initiative 148 (62%)	1 oz usable; 4 plants (mature); 12 seedlings
Nevada	2000	Ballot Question 9 (65%)	1 oz usable; 7 plants (3 mature, 4 immature)
New Hampshire	2013	House Bill 573 (284-66 H; 18-6 S)	Two ounces of usable cannabis during a 10-day period
New Jersey	2010	Senate Bill 119 (48-14 H; 25-13 S)	2 oz usable
New Mexico	2007	Senate Bill 523 (36-31 H; 32-3 S)	6 oz usable; 16 plants (4 mature, 12 immature)
New York	2014	Assembly Bill 6357 (117-13 A; 49-10 S)	30-day supply non-smokable marijuana
Oregon	1998	Ballot Measure 67 (55%)	24 oz usable; 24 plants (6 mature, 18 immature)
Rhode Island	2006	Senate Bill 0710 (52-10 H; 33-1 S)	2.5 oz usable; 12 plants
Vermont	2004	Senate Bill 76 (22-7) HB 645 (82-59)	2 oz usable; 9 plants (2 mature, 7 immature)
Washington	1998	Initiative 692 (59%)	24 oz usable; 15 plants
<b>KEY:</b>			
*MM- Medical Marijuana			

Source: ProCon.org. "24 Legal Medical Marijuana States and DC." ProCon.org. 14 Mar. 2016. Web. 29 Apr. 2016.

**LLEP**

**Lowest law enforcement priority** is a local-level policy. Under such a policy, marijuana remains illegal and subject to punishment, but receives less attention from law enforcement officials. De-prioritization through voter initiatives or legislative action has been implemented in more than a dozen cities and counties around the country.

Table 1

Cities and localities with marijuana policy change for law enforcement priorities, the year it was passed and the voter support.

Jurisdiction	Year Passed	Vote Percentage
Seattle, WA	2003	Passed with 58% of the vote.
Oakland, CA	2004	Passed with 65% of the vote.
Santa Barbara, CA	2006	Passed with 66% of the vote.
Santa Cruz, CA	2006	Passed with 64% of the vote.
San Francisco, CA	2006	San Francisco Board of Supervisors passed the ordinance in an 8-3 vote.
Santa Monica, CA	2006	Passed with 65% of the vote.
West Hollywood, CA	2006	West Hollywood City Council passed the resolution in a 4-0 vote.
Eureka Springs, AR	2006	Passed with 62% of the vote.
Missoula County, MT*	2006	Passed with 54% of the vote.
Denver, CO	2007	Passed with 55% of the vote.
Fayetteville, AR	2008	Passed with 66% of the vote.
Hawaii County, HI	2008	Passed with 53% of the vote.
Hailey, ID	2010	The initiative passed with 51% of the vote in 2007, and again in 2008 with 54% of the vote, but due to a redaction by a district court judge, the measure did not officially go into effect until 2010.
Kalamazoo, MI	2011	Passed with 66% of the vote.
Tacoma, WA	2011	Passed with 65% of the vote.
Ypsilanti, MI	2012	Passed with 74% of the vote.
<b>* now an ordinance not a ballot initiative</b>		

Source: Marijuana Policy Project "Lowest Law Enforcement Priority." MPP.org. Web. 29 Apr. 2016.

## Anticipating Opposition

A host of arguments remain against implementing marijuana reform, including that marijuana use is immoral, that the drug is a danger to children and the larger community, and that sales damage other business interests. The opposition to reform continues to be powerful enough to keep half of U.S. states from implementing medical marijuana and 46 from adopting more inclusive reforms. In the context of Native

American tribes, the numbers are even starker. Although many tribes are located within states with medical marijuana programs such as Arizona, California, Colorado, Oregon, Washington, and New Mexico; members located in states such as Oklahoma, Nebraska, North Carolina, Idaho, and Montana continue to lack access to medical marijuana programs both within their communities and those surrounding.

The three objections raised here are by no means the only ones offered by the powerful opposition to marijuana reform. However, they could be some of the most salient and powerful deterrents to the reform efforts, as children should be protected to the best of our ability, traffic and public safety is a problem for everyone within the community, and business interests have capital and community power to oppose legislation that could hurt them. Thus, it seems reasonable to explore these areas and consider them in the larger context of reform for Native American tribes.

### **Abuse Prevention and Youth**

Some of the most common arguments against the legalization of marijuana revolve around the negative consequences (either real or perceived) of adolescent marijuana use, impairment related to skills such as driving, decreased lung function among users, dependency, cognitive function impairment, and increased risk of other illicit drug use. Marijuana is often targeted along with other drugs such as cigarettes and alcohol in school based prevention programs (Pentz and Sussman). Prevention program studies reveal that refusal assertion skills are less effective than comprehensive life and interpersonal skill training that involves structured discussions with the facilitator (Pentz and Sussman). Programs along these lines provide accurate information about drug-use myths and negative consequences.

The tribe is already conscious of the need to have a substance abuse prevention program, and various groups have attempted to enhance or improve the existing

programs. The Civil Action Team has advocated for expanded use of the DARE program, even though the outcome evaluation data on the effectiveness is not positive (Pentz and Sussman). Colorado has launched a new program to directly target the mixed messaging surrounding marijuana's recreational use for youth. If marijuana reform takes place on the tribe, serious reevaluation of programs and prevention approaches will be needed.

The Children's Hospital Colorado has developed a resource for parents on how to talk to youth about marijuana. The manual advocates for "open and non-judgmental manner" of dialogue that starts conversations with them about the facts surrounding the substance such as the effects on the young brain, the medical benefits of marijuana for some conditions, and the social context surrounding use (Caywood). The instructions for parents encourage honest conversations around why people use marijuana, but also information about the risks and conscientious consumption necessary for adult use.

Colorado has also developed extensive information regarding dropout prevention, marijuana and fetal development, youth access restrictions, and marijuana in schools. In looking to Colorado and other states that have successfully implemented adult-use marijuana and medical marijuana, it is important to take their lessons and insights on abuse prevention and youth access seriously and properly tailor those experiences with education and programming to tribal needs.

### **Traffic Dangers**

Reports regarding the impact of marijuana and traffic violations in adult-use are incredibly divided, with each perspective trying to dismantle the evidence of the other. Some studies have indicated a rise in fatal car accidents since the introduction of adult-use marijuana (Schradler), while others report that highway fatalities have decreased

(Balko). What is clear is that there are more tourists visiting Colorado for the purpose of marijuana consumption, but with increased visitors comes increased traffic violations and accidents as the EBCN has already learned from gaming. One of the greatest challenges affiliated with these studies has to do with the kinds of THC testing conducted on drivers. The tests that test marijuana metabolites have little value in determining when the marijuana was consumed by the driver.

A host of other variables must be considered when looking into these studies, including the fact that roads are becoming safer, cars have more safety features than ever before, and that there are more cars on the road than ever. If the hard numbers state that there are more fatalities in Colorado than before marijuana reform, it is possible that consumption was a contributory factor. But other factors remain important and relevant to the debate. Additionally, the studies published on traffic and marijuana most recently focus almost entirely on states with adult-use marijuana reform such as Colorado. These studies almost never include data regarding states that have medical marijuana correlated to traffic violations. Thus, it is important to continue to monitor these outcomes and to be critical of the data collection and presentation.

### **Interest Group Opposition**

As in every policy debate, there exists groups that lobby on both sides of the issue. Although the overwhelming majority of Americans (69%) believe alcohol is more harmful to a person's health than marijuana and more than half of Americans (62%) have tried marijuana in their lifetime; in 2015, slightly more than half of Americans (53%) agreed marijuana should be made legal (Motel). The support for marijuana, although not a towering majority, is gaining momentum very quickly; jumping over 20 points in the polls in the past five years (Motel).

The major opponents include several interest groups such as the Citizens Against Legalizing Marijuana, and the Smart Approaches to Marijuana. These organizations are relatively low impact compared to their pro-reform counterparts such as the Drug Policy Alliance, Open Society Foundation, Marijuana Policy Project, and many more. The groups providing the most influence in the anti-marijuana movement are police unions, the Office of National Drug Control Policy, prison guard unions, alcohol brands, and pharmaceutical companies. All groups have a vested interest in keeping prohibition abreast. Prison guards are not as celebrated as, for example, military veterans; which is not a call to judgment, but rather an observation of the status that prison guards hold in society compared to other similar professions.

In contrast, alcohol and pharmaceutical brands have incredible influence and resources when it comes to policy change. Proof of this can be found in the funding of community anti-marijuana advocacy groups such as the Partnership for Drug-Free Kids deriving a portion of its budget from opioid and other pharmaceutical manufacturers such as Purdue Pharma and Abbott Laboratories (Fang). The California Beer and Beverage Distributors made campaign contributions to the work opposing the adult-use of marijuana, as they believe legal marijuana would cut into their sales (Dilley). However, market innovations and the increasingly mainstream presence of craft beer suggests that alcohol has less competition than suggested.

Lastly, the tobacco lobby has continued to monitor the progression of marijuana policy change for the fear of a competing legal vice. The pharmaceutical, alcohol and tobacco industries share similar desires to maintain certain percentages of the vice market. With tobacco usage decreasing steadily overtime and few American's smoking than ever – 16.8 percent in 2014 – marijuana taking a market share from tobacco will be costly for the industry (Centers for Disease Control).



## Conclusion

In considering the political landscape for the Eastern Band of the Cherokee for future marijuana reform, the potential is very high for substantive change. The interest is evident and the opportunity for a new diversified economic sector along with positive externalities such as a potential reduction in local police resources and new financial contributions to education and healthcare improvement are reasons for almost any community to explore the opportunity afforded by marijuana policy reform. What was previously an arms race to become more punitive with drug policies is rapidly dissolving into new paradigms of consideration both within the United States and beyond. Yet considerable opposition to marijuana reform (or at least the kinds of reforms that have been formally introduced to these decision makers) remains within the Tribal Council and perhaps unvoiced within the community.

The current arguments voiced against reform efforts by the EBCN largely resemble the same kinds of arguments waged against the introduction of gaming. For example, opponents argue that legalization would lead to increased crime, more social problems like those associated with alcohol, increased addiction, and moral repugnance towards the activity. The evidence for economic empowerment, reduction in police involvement, improvement for medical care and treatment, and tourism potential, however, greatly outweigh the negative effects of sustained marijuana prohibition within the Tribe. As successful entrepreneurs in the gaming industry, it is clear that the EBCN will take a thoughtful approach to the kinds of implementation of marijuana reform that is both consistent with their goals and conscientious of opposition, which is most recognizable in the annual disbursement received by tribal members from the gaming revenue. This practice ensures that all members receive a minimum benefit of

financial compensation while others may receive the benefit of employment, increased business opportunities, capital project improvement from revenue, and higher quality schools for their children due to gaming revenue and sustained tourist interest.

Since the Supreme Court rejected to hear the *States of Nebraska and Oklahoma v. State of Colorado* case, tribes such as the EBCN interested in marijuana reform may be able to pivot their attention away from federal interdiction concerns and begin to focus on local support in the Tribal Council. The previous, imminent danger of federal interdiction for marijuana cultivation may be seeing the last of its days, at least for tribe sponsored and implemented marijuana reform. What remains simultaneously the greatest asset and most substantive barrier to marijuana reform for the EBCN is the autonomy of the Tribal Council. Both opposing interests and those supportive of reform will continue to get individuals elected into opening positions on the Council in an effort to support their respective causes. The anti-marijuana ideology continues to maintain the status-quo on the Qualla Boundary, but the reception to the cause, similar to gaming, is becoming much more appealing. The question now, it seems, is not *if* the Eastern Band of the Cherokee will engage in marijuana reform, but when.

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